

SB0328



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

SB0328

Introduced 2/7/2007, by Sen. Mattie Hunter

SYNOPSIS AS INTRODUCED:

See Index

Amends various Acts to abolish the death penalty. Provides that on or after the effective date of this amendatory Act no person may be executed. Requires resentencing of those already sentenced to death. Effective immediately.

LRB095 08854 RLC 29040 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT to abolish the death penalty.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 3. The Department of State Police Law of the Civil
5 Administrative Code of Illinois is amended by changing Section
6 2605-40 as follows:

7 (20 ILCS 2605/2605-40) (was 20 ILCS 2605/55a-4)

8 Sec. 2605-40. Division of Forensic Services. The Division
9 of Forensic Services shall exercise the following functions:

10 (1) Exercise the rights, powers, and duties vested by
11 law in the Department by the Criminal Identification Act.

12 (2) Exercise the rights, powers, and duties vested by
13 law in the Department by Section 2605-300 of this Law.

14 (3) Provide assistance to local law enforcement
15 agencies through training, management, and consultant
16 services.

17 (4) (Blank).

18 (5) Exercise other duties that may be assigned by the
19 Director in order to fulfill the responsibilities and
20 achieve the purposes of the Department.

21 (6) Establish and operate a forensic science
22 laboratory system, including a forensic toxicological
23 laboratory service, for the purpose of testing specimens

1 submitted by coroners and other law enforcement officers in
2 their efforts to determine whether alcohol, drugs, or
3 poisonous or other toxic substances have been involved in
4 deaths, accidents, or illness. Forensic toxicological
5 laboratories shall be established in Springfield, Chicago,
6 and elsewhere in the State as needed.

7 (7) (Blank). ~~Subject to specific appropriations made~~
8 ~~for these purposes, establish and coordinate a system for~~
9 ~~providing accurate and expedited forensic science and~~
10 ~~other investigative and laboratory services to local law~~
11 ~~enforcement agencies and local State's Attorneys in aid of~~
12 ~~the investigation and trial of capital cases.~~

13 (Source: P.A. 90-130, eff. 1-1-98; 91-239, eff. 1-1-00; 91-589,
14 eff. 1-1-00; 91-760, eff. 1-1-01.)

15 Section 5. The Criminal Identification Act is amended by
16 changing Section 2.1 as follows:

17 (20 ILCS 2630/2.1) (from Ch. 38, par. 206-2.1)

18 Sec. 2.1. For the purpose of maintaining complete and
19 accurate criminal records of the Department of State Police, it
20 is necessary for all policing bodies of this State, the clerk
21 of the circuit court, the Illinois Department of Corrections,
22 the sheriff of each county, and State's Attorney of each county
23 to submit certain criminal arrest, charge, and disposition
24 information to the Department for filing at the earliest time

1 possible. Unless otherwise noted herein, it shall be the duty
2 of all policing bodies of this State, the clerk of the circuit
3 court, the Illinois Department of Corrections, the sheriff of
4 each county, and the State's Attorney of each county to report
5 such information as provided in this Section, both in the form
6 and manner required by the Department and within 30 days of the
7 criminal history event. Specifically:

8 (a) Arrest Information. All agencies making arrests for
9 offenses which are required by statute to be collected,
10 maintained or disseminated by the Department of State Police
11 shall be responsible for furnishing daily to the Department
12 fingerprints, charges and descriptions of all persons who are
13 arrested for such offenses. All such agencies shall also notify
14 the Department of all decisions by the arresting agency not to
15 refer such arrests for prosecution. With approval of the
16 Department, an agency making such arrests may enter into
17 arrangements with other agencies for the purpose of furnishing
18 daily such fingerprints, charges and descriptions to the
19 Department upon its behalf.

20 (b) Charge Information. The State's Attorney of each county
21 shall notify the Department of all charges filed and all
22 petitions filed alleging that a minor is delinquent, including
23 all those added subsequent to the filing of a case, and whether
24 charges were not filed in cases for which the Department has
25 received information required to be reported pursuant to
26 paragraph (a) of this Section. With approval of the Department,

1 the State's Attorney may enter into arrangements with other
2 agencies for the purpose of furnishing the information required
3 by this subsection (b) to the Department upon the State's
4 Attorney's behalf.

5 (c) Disposition Information. The clerk of the circuit court
6 of each county shall furnish the Department, in the form and
7 manner required by the Supreme Court, with all final
8 dispositions of cases for which the Department has received
9 information required to be reported pursuant to paragraph (a)
10 or (d) of this Section. Such information shall include, for
11 each charge, all (1) judgments of not guilty, judgments of
12 guilty including the sentence pronounced by the court, findings
13 that a minor is delinquent and any sentence made based on those
14 findings, discharges and dismissals in the court; (2) reviewing
15 court orders filed with the clerk of the circuit court which
16 reverse or remand a reported conviction or findings that a
17 minor is delinquent or that vacate or modify a sentence or
18 sentence made following a trial that a minor is delinquent; (3)
19 continuances to a date certain in furtherance of an order of
20 supervision granted under Section 5-6-1 of the Unified Code of
21 Corrections or an order of probation granted under Section 10
22 of the Cannabis Control Act, Section 410 of the Illinois
23 Controlled Substances Act, Section 70 of the Methamphetamine
24 Control and Community Protection Act, Section 12-4.3 of the
25 Criminal Code of 1961, Section 10-102 of the Illinois
26 Alcoholism and Other Drug Dependency Act, Section 40-10 of the

1 Alcoholism and Other Drug Abuse and Dependency Act, Section 10
2 of the Steroid Control Act, or Section 5-615 of the Juvenile
3 Court Act of 1987; and (4) judgments or court orders
4 terminating or revoking a sentence to or juvenile disposition
5 of probation, supervision or conditional discharge and any
6 resentencing or new court orders entered by a juvenile court
7 relating to the disposition of a minor's case involving
8 delinquency after such revocation.

9 (d) Fingerprints After Sentencing.

10 (1) After the court pronounces sentence, sentences a
11 minor following a trial in which a minor was found to be
12 delinquent or issues an order of supervision or an order of
13 probation granted under Section 10 of the Cannabis Control
14 Act, Section 410 of the Illinois Controlled Substances Act,
15 Section 70 of the Methamphetamine Control and Community
16 Protection Act, Section 12-4.3 of the Criminal Code of
17 1961, Section 10-102 of the Illinois Alcoholism and Other
18 Drug Dependency Act, Section 40-10 of the Alcoholism and
19 Other Drug Abuse and Dependency Act, Section 10 of the
20 Steroid Control Act, or Section 5-615 of the Juvenile Court
21 Act of 1987 for any offense which is required by statute to
22 be collected, maintained, or disseminated by the
23 Department of State Police, the State's Attorney of each
24 county shall ask the court to order a law enforcement
25 agency to fingerprint immediately all persons appearing
26 before the court who have not previously been fingerprinted

1 for the same case. The court shall so order the requested
2 fingerprinting, if it determines that any such person has
3 not previously been fingerprinted for the same case. The
4 law enforcement agency shall submit such fingerprints to
5 the Department daily.

6 (2) After the court pronounces sentence or makes a
7 disposition of a case following a finding of delinquency
8 for any offense which is not required by statute to be
9 collected, maintained, or disseminated by the Department
10 of State Police, the prosecuting attorney may ask the court
11 to order a law enforcement agency to fingerprint
12 immediately all persons appearing before the court who have
13 not previously been fingerprinted for the same case. The
14 court may so order the requested fingerprinting, if it
15 determines that any so sentenced person has not previously
16 been fingerprinted for the same case. The law enforcement
17 agency may retain such fingerprints in its files.

18 (e) Corrections Information. The Illinois Department of
19 Corrections and the sheriff of each county shall furnish the
20 Department with all information concerning the receipt,
21 escape, execution before the effective date of this amendatory
22 Act of the 95th General Assembly, death, release, pardon,
23 parole, commutation of sentence, granting of executive
24 clemency or discharge of an individual who has been sentenced
25 or committed to the agency's custody for any offenses which are
26 mandated by statute to be collected, maintained or disseminated

1 by the Department of State Police. For an individual who has
2 been charged with any such offense and who escapes from custody
3 or dies while in custody, all information concerning the
4 receipt and escape or death, whichever is appropriate, shall
5 also be so furnished to the Department.

6 (Source: P.A. 94-556, eff. 9-11-05.)

7 (30 ILCS 105/5.518 rep.)

8 Section 10. The State Finance Act is amended by repealing
9 Section 5.518 on July 1, 2007.

10 Section 15. The Counties Code is amended by changing
11 Sections 3-4011 and 3-9005 as follows:

12 (55 ILCS 5/3-4011) (from Ch. 34, par. 3-4011)

13 Sec. 3-4011. Expenses and legal services for indigent
14 defendants in felony cases. It shall be the duty of the county
15 board in counties containing fewer than 500,000 inhabitants to
16 appropriate a sufficient sum for the purpose of paying for the
17 legal services necessarily rendered for the defense of indigent
18 persons in felony cases, and for costs, expenses and legal
19 services necessary in the prosecution of an appeal when the
20 sentence is death and the sentence was imposed before the
21 effective date of this amendatory Act of the 95th General
22 Assembly, which is to be paid upon the orders of a court of
23 competent jurisdiction. It shall likewise be the duty of the

1 county board in counties containing fewer than 500,000
2 inhabitants to appropriate a sufficient sum for the payment of
3 out of pocket expenses necessarily incurred by appointed
4 counsel in the prosecution of an appeal on behalf of an
5 indigent incarcerated defendant in felony cases. In such cases
6 payment shall be made upon the order of the reviewing court.

7 (Source: P.A. 86-962.)

8 (55 ILCS 5/3-9005) (from Ch. 34, par. 3-9005)

9 Sec. 3-9005. Powers and duties of State's attorney.

10 (a) The duty of each State's attorney shall be:

11 (1) To commence and prosecute all actions, suits,
12 indictments and prosecutions, civil and criminal, in the
13 circuit court for his county, in which the people of the
14 State or county may be concerned.

15 (2) To prosecute all forfeited bonds and
16 recognizances, and all actions and proceedings for the
17 recovery of debts, revenues, moneys, fines, penalties and
18 forfeitures accruing to the State or his county, or to any
19 school district or road district in his county; also, to
20 prosecute all suits in his county against railroad or
21 transportation companies, which may be prosecuted in the
22 name of the People of the State of Illinois.

23 (3) To commence and prosecute all actions and
24 proceedings brought by any county officer in his official
25 capacity.

1 (4) To defend all actions and proceedings brought
2 against his county, or against any county or State officer,
3 in his official capacity, within his county.

4 (5) To attend the examination of all persons brought
5 before any judge on habeas corpus, when the prosecution is
6 in his county.

7 (6) To attend before judges and prosecute charges of
8 felony or misdemeanor, for which the offender is required
9 to be recognized to appear before the circuit court, when
10 in his power so to do.

11 (7) To give his opinion, without fee or reward, to any
12 county officer in his county, upon any question or law
13 relating to any criminal or other matter, in which the
14 people or the county may be concerned.

15 (8) To assist the attorney general whenever it may be
16 necessary, and in cases of appeal from his county to the
17 Supreme Court, to which it is the duty of the attorney
18 general to attend, he shall furnish the attorney general at
19 least 10 days before such is due to be filed, a manuscript
20 of a proposed statement, brief and argument to be printed
21 and filed on behalf of the people, prepared in accordance
22 with the rules of the Supreme Court. However, if such
23 brief, argument or other document is due to be filed by law
24 or order of court within this 10 day period, then the
25 State's attorney shall furnish such as soon as may be
26 reasonable.

1 (9) To pay all moneys received by him in trust, without
2 delay, to the officer who by law is entitled to the custody
3 thereof.

4 (10) To notify, by first class mail, complaining
5 witnesses of the ultimate disposition of the cases arising
6 from an indictment or an information.

7 (11) To perform such other and further duties as may,
8 from time to time, be enjoined on him by law.

9 (12) To appear in all proceedings by collectors of
10 taxes against delinquent taxpayers for judgments to sell
11 real estate, and see that all the necessary preliminary
12 steps have been legally taken to make the judgment legal
13 and binding.

14 (b) The State's Attorney of each county shall have
15 authority to appoint one or more special investigators to serve
16 subpoenas, make return of process and conduct investigations
17 which assist the State's Attorney in the performance of his
18 duties. A special investigator shall not carry firearms except
19 with permission of the State's Attorney and only while carrying
20 appropriate identification indicating his employment and in
21 the performance of his assigned duties.

22 Subject to the qualifications set forth in this subsection,
23 special investigators shall be peace officers and shall have
24 all the powers possessed by investigators under the State's
25 Attorneys Appellate Prosecutor's Act.

26 No special investigator employed by the State's Attorney

1 shall have peace officer status or exercise police powers
2 unless he or she successfully completes the basic police
3 training course mandated and approved by the Illinois Law
4 Enforcement Training Standards Board or such board waives the
5 training requirement by reason of the special investigator's
6 prior law enforcement experience or training or both. Any
7 State's Attorney appointing a special investigator shall
8 consult with all affected local police agencies, to the extent
9 consistent with the public interest, if the special
10 investigator is assigned to areas within that agency's
11 jurisdiction.

12 Before a person is appointed as a special investigator, his
13 fingerprints shall be taken and transmitted to the Department
14 of State Police. The Department shall examine its records and
15 submit to the State's Attorney of the county in which the
16 investigator seeks appointment any conviction information
17 concerning the person on file with the Department. No person
18 shall be appointed as a special investigator if he has been
19 convicted of a felony or other offense involving moral
20 turpitude. A special investigator shall be paid a salary and be
21 reimbursed for actual expenses incurred in performing his
22 assigned duties. The county board shall approve the salary and
23 actual expenses and appropriate the salary and expenses in the
24 manner prescribed by law or ordinance.

25 (c) The State's Attorney may request and receive from
26 employers, labor unions, telephone companies, and utility

1 companies location information concerning putative fathers and
2 noncustodial parents for the purpose of establishing a child's
3 paternity or establishing, enforcing, or modifying a child
4 support obligation. In this subsection, "location information"
5 means information about (i) the physical whereabouts of a
6 putative father or noncustodial parent, (ii) the putative
7 father or noncustodial parent's employer, or (iii) the salary,
8 wages, and other compensation paid and the health insurance
9 coverage provided to the putative father or noncustodial parent
10 by the employer of the putative father or noncustodial parent
11 or by a labor union of which the putative father or
12 noncustodial parent is a member.

13 (d) (Blank) ~~For each State fiscal year, the State's~~
14 ~~Attorney of Cook County shall appear before the General~~
15 ~~Assembly and request appropriations to be made from the Capital~~
16 ~~Litigation Trust Fund to the State Treasurer for the purpose of~~
17 ~~providing assistance in the prosecution of capital cases in~~
18 ~~Cook County and for the purpose of providing assistance to the~~
19 ~~State in post conviction proceedings in capital cases under~~
20 ~~Article 122 of the Code of Criminal Procedure of 1963 and in~~
21 ~~relation to petitions filed under Section 2-1401 of the Code of~~
22 ~~Civil Procedure in relation to capital cases. The State's~~
23 ~~Attorney may appear before the General Assembly at other times~~
24 ~~during the State's fiscal year to request supplemental~~
25 ~~appropriations from the Trust Fund to the State Treasurer.~~

26 (e) The State's Attorney shall have the authority to enter

1 into a written agreement with the Department of Revenue for
2 pursuit of civil liability under Section 17-1a of the Criminal
3 Code of 1961 against persons who have issued to the Department
4 checks or other orders in violation of the provisions of
5 paragraph (d) of subsection (B) of Section 17-1 of the Criminal
6 Code of 1961, with the Department to retain the amount owing
7 upon the dishonored check or order along with the dishonored
8 check fee imposed under the Uniform Penalty and Interest Act,
9 with the balance of damages, fees, and costs collected under
10 Section 17-1a of the Criminal Code of 1961 to be retained by
11 the State's Attorney. The agreement shall not affect the
12 allocation of fines and costs imposed in any criminal
13 prosecution.

14 (Source: P.A. 92-492, eff. 1-1-02; 93-972, eff. 8-20-04.)

15 (55 ILCS 5/3-4006.1 rep.)

16 Section 20. The Counties Code is amended by repealing
17 Section 3-4006.1.

18 Section 25. The School Code is amended by changing Section
19 21-23b as follows:

20 (105 ILCS 5/21-23b) (from Ch. 122, par. 21-23b)

21 Sec. 21-23b. Conviction of felony.

22 (a) Whenever the holder of any certificate issued under
23 this Article is employed by the school board of any school

1 district, including a special charter district or school
2 district organized under Article 34, and is convicted, either
3 after a bench trial, trial by jury, or plea of guilty, of any
4 offense for which a sentence to ~~death or~~ a term of imprisonment
5 in a penitentiary for one year or more is provided, the school
6 board shall promptly notify the State Board of Education in
7 writing of the name of the certificate holder, the fact of the
8 conviction, and the name and location of the court in which the
9 conviction occurred.

10 (b) Whenever the State Board of Education receives notice
11 of a conviction under subsection (a) or otherwise learns that
12 any person who is a "teacher" as that term is defined in
13 Section 16-106 of the Illinois Pension Code has been convicted,
14 either after a bench trial, trial by jury, or plea of guilty,
15 of any offense for which a sentence to ~~death or~~ a term of
16 imprisonment in a penitentiary for one year or more is
17 provided, the State Board of Education shall promptly notify in
18 writing the board of trustees of the Teachers' Retirement
19 System of the State of Illinois and the board of trustees of
20 the Public School Teachers' Pension and Retirement Fund of the
21 City of Chicago of the name of the certificate holder or
22 teacher, the fact of the conviction, the name and location of
23 the court in which the conviction occurred, and the number
24 assigned in that court to the case in which the conviction
25 occurred.

26 (Source: P.A. 87-1001.)

1 Section 30. The Illinois Public Aid Code is amended by
2 changing Section 1-8 as follows:

3 (305 ILCS 5/1-8)

4 Sec. 1-8. Fugitives ineligible.

5 (a) The following persons are not eligible for aid under
6 this Code, or federal food stamps or federal food stamp
7 benefits:

8 (1) A person who has fled from the jurisdiction of any
9 court of record of this or any other state or of the United
10 States to avoid prosecution for a felony or to avoid giving
11 testimony in any criminal proceeding involving the alleged
12 commission of a felony.

13 (2) A person who has fled to avoid imprisonment in a
14 correctional facility of this or any other state or the
15 United States for having committed a felony.

16 (3) A person who has escaped from a correctional
17 facility of this or any other state or the United States if
18 the person was incarcerated for having committed a felony.

19 (4) A person who is violating a condition of probation
20 or parole imposed under federal or State law.

21 In this Section, "felony" means a violation of a penal
22 statute of this State for which a sentence to a term of
23 imprisonment in a penitentiary for one year or more is provided
24 or a violation of a penal statute of ~~or~~ any other state or the

1 United States for which a sentence to death or to a term of
2 imprisonment in a penitentiary for one year or more is
3 provided.

4 To implement this Section, the Illinois Department may
5 exchange necessary information with an appropriate law
6 enforcement agency of this or any other state, a political
7 subdivision of this or any other state, or the United States.

8 (b) (Blank).

9 (Source: P.A. 92-111, eff. 1-1-02.)

10 Section 35. The Criminal Code of 1961 is amended by
11 changing Sections 2-7, 7-10, 9-1, 9-1.2, 30-1, and 33B-1 as
12 follows:

13 (720 ILCS 5/2-7) (from Ch. 38, par. 2-7)

14 Sec. 2-7. "Felony".

15 "Felony" means an offense for which a sentence to ~~death or~~
16 ~~to~~ a term of imprisonment in a penitentiary for one year or
17 more is provided.

18 (Source: P.A. 77-2638.)

19 (720 ILCS 5/7-10) (from Ch. 38, par. 7-10)

20 Sec. 7-10. Execution of death sentence.

21 A public officer who, in the exercise of his official duty,
22 puts a person to death pursuant to a sentence of a court of
23 competent jurisdiction made before the effective date of this

1 amendatory Act of the 95th General Assembly, is justified if he
2 acts in accordance with the sentence pronounced and the law
3 prescribing the procedure for execution of a death sentence.
4 (Source: Laws 1961, p. 1983.)

5 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

6 Sec. 9-1. First degree Murder ~~—Death penalties—~~
7 ~~Exceptions—Separate Hearings—Proof—Findings—Appellate~~
8 ~~procedures—Reversals.~~

9 (a) A person who kills an individual without lawful
10 justification commits first degree murder if, in performing the
11 acts which cause the a term of natural life imprisonment ~~death~~:

12 (1) he either intends to kill or do great bodily harm
13 to that individual or another, or knows that such acts will
14 cause death to that individual or another; or

15 (2) he knows that such acts create a strong probability
16 of death or great bodily harm to that individual or
17 another; or

18 (3) he is attempting or committing a forcible felony
19 other than second degree murder.

20 (b) Aggravating Factors. A defendant who at the time of the
21 commission of the offense has attained the age of 18 or more
22 and who has been found guilty of first degree murder may be
23 sentenced to a term of natural life imprisonment ~~death~~ if:

24 (1) the murdered individual was a peace officer or
25 fireman killed in the course of performing his official

1 duties, to prevent the performance of his official duties,
2 or in retaliation for performing his official duties, and
3 the defendant knew or should have known that the murdered
4 individual was a peace officer or fireman; or

5 (2) the murdered individual was an employee of an
6 institution or facility of the Department of Corrections,
7 or any similar local correctional agency, killed in the
8 course of performing his official duties, to prevent the
9 performance of his official duties, or in retaliation for
10 performing his official duties, or the murdered individual
11 was an inmate at such institution or facility and was
12 killed on the grounds thereof, or the murdered individual
13 was otherwise present in such institution or facility with
14 the knowledge and approval of the chief administrative
15 officer thereof; or

16 (3) the defendant has been convicted of murdering two
17 or more individuals under subsection (a) of this Section or
18 under any law of the United States or of any state which is
19 substantially similar to subsection (a) of this Section
20 regardless of whether the deaths occurred as the result of
21 the same act or of several related or unrelated acts so
22 long as the deaths were the result of either an intent to
23 kill more than one person or of separate acts which the
24 defendant knew would cause death or create a strong
25 probability of death or great bodily harm to the murdered
26 individual or another; or

1 (4) the murdered individual was killed as a result of
2 the hijacking of an airplane, train, ship, bus or other
3 public conveyance; or

4 (5) the defendant committed the murder pursuant to a
5 contract, agreement or understanding by which he was to
6 receive money or anything of value in return for committing
7 the murder or procured another to commit the murder for
8 money or anything of value; or

9 (6) the murdered individual was killed in the course of
10 another felony if:

11 (a) the murdered individual:

12 (i) was actually killed by the defendant, or

13 (ii) received physical injuries personally
14 inflicted by the defendant substantially
15 contemporaneously with physical injuries caused by
16 one or more persons for whose conduct the defendant
17 is legally accountable under Section 5-2 of this
18 Code, and the physical injuries inflicted by
19 either the defendant or the other person or persons
20 for whose conduct he is legally accountable caused
21 the death of the murdered individual; and

22 (b) in performing the acts which caused the death
23 of the murdered individual or which resulted in
24 physical injuries personally inflicted by the
25 defendant on the murdered individual under the
26 circumstances of subdivision (ii) of subparagraph (a)

1 of paragraph (6) of subsection (b) of this Section, the
2 defendant acted with the intent to kill the murdered
3 individual or with the knowledge that his acts created
4 a strong probability of death or great bodily harm to
5 the murdered individual or another; and

6 (c) the other felony was an inherently violent
7 crime or the attempt to commit an inherently violent
8 crime. In this subparagraph (c), "inherently violent
9 crime" includes, but is not limited to, armed robbery,
10 robbery, predatory criminal sexual assault of a child,
11 aggravated criminal sexual assault, aggravated
12 kidnapping, aggravated vehicular hijacking, aggravated
13 arson, aggravated stalking, residential burglary, and
14 home invasion; or

15 (7) the murdered individual was under 12 years of age
16 and the death resulted from exceptionally brutal or heinous
17 behavior indicative of wanton cruelty; or

18 (8) the defendant committed the murder with intent to
19 prevent the murdered individual from testifying or
20 participating in any criminal investigation or prosecution
21 or giving material assistance to the State in any
22 investigation or prosecution, either against the defendant
23 or another; or the defendant committed the murder because
24 the murdered individual was a witness in any prosecution or
25 gave material assistance to the State in any investigation
26 or prosecution, either against the defendant or another;

1 for purposes of this paragraph (8), "participating in any
2 criminal investigation or prosecution" is intended to
3 include those appearing in the proceedings in any capacity
4 such as trial judges, prosecutors, defense attorneys,
5 investigators, witnesses, or jurors; or

6 (9) the defendant, while committing an offense
7 punishable under Sections 401, 401.1, 401.2, 405, 405.2,
8 407 or 407.1 or subsection (b) of Section 404 of the
9 Illinois Controlled Substances Act, or while engaged in a
10 conspiracy or solicitation to commit such offense,
11 intentionally killed an individual or counseled,
12 commanded, induced, procured or caused the intentional
13 killing of the murdered individual; or

14 (10) the defendant was incarcerated in an institution
15 or facility of the Department of Corrections at the time of
16 the murder, and while committing an offense punishable as a
17 felony under Illinois law, or while engaged in a conspiracy
18 or solicitation to commit such offense, intentionally
19 killed an individual or counseled, commanded, induced,
20 procured or caused the intentional killing of the murdered
21 individual; or

22 (11) the murder was committed in a cold, calculated and
23 premeditated manner pursuant to a preconceived plan,
24 scheme or design to take a human life by unlawful means,
25 and the conduct of the defendant created a reasonable
26 expectation that the death of a human being would result

1 therefrom; or

2 (12) the murdered individual was an emergency medical
3 technician - ambulance, emergency medical technician -
4 intermediate, emergency medical technician - paramedic,
5 ambulance driver, or other medical assistance or first aid
6 personnel, employed by a municipality or other
7 governmental unit, killed in the course of performing his
8 official duties, to prevent the performance of his official
9 duties, or in retaliation for performing his official
10 duties, and the defendant knew or should have known that
11 the murdered individual was an emergency medical
12 technician - ambulance, emergency medical technician -
13 intermediate, emergency medical technician - paramedic,
14 ambulance driver, or other medical assistance or first aid
15 personnel; or

16 (13) the defendant was a principal administrator,
17 organizer, or leader of a calculated criminal drug
18 conspiracy consisting of a hierarchical position of
19 authority superior to that of all other members of the
20 conspiracy, and the defendant counseled, commanded,
21 induced, procured, or caused the intentional killing of the
22 murdered person; or

23 (14) the murder was intentional and involved the
24 infliction of torture. For the purpose of this Section
25 torture means the infliction of or subjection to extreme
26 physical pain, motivated by an intent to increase or

1 prolong the pain, suffering or agony of the victim; or

2 (15) the murder was committed as a result of the
3 intentional discharge of a firearm by the defendant from a
4 motor vehicle and the victim was not present within the
5 motor vehicle; or

6 (16) the murdered individual was 60 years of age or
7 older and the death resulted from exceptionally brutal or
8 heinous behavior indicative of wanton cruelty; or

9 (17) the murdered individual was a disabled person and
10 the defendant knew or should have known that the murdered
11 individual was disabled. For purposes of this paragraph
12 (17), "disabled person" means a person who suffers from a
13 permanent physical or mental impairment resulting from
14 disease, an injury, a functional disorder, or a congenital
15 condition that renders the person incapable of adequately
16 providing for his or her own health or personal care; or

17 (18) the murder was committed by reason of any person's
18 activity as a community policing volunteer or to prevent
19 any person from engaging in activity as a community
20 policing volunteer; or

21 (19) the murdered individual was subject to an order of
22 protection and the murder was committed by a person against
23 whom the same order of protection was issued under the
24 Illinois Domestic Violence Act of 1986; or

25 (20) the murdered individual was known by the defendant
26 to be a teacher or other person employed in any school and

1 the teacher or other employee is upon the grounds of a
2 school or grounds adjacent to a school, or is in any part
3 of a building used for school purposes; or

4 (21) the murder was committed by the defendant in
5 connection with or as a result of the offense of terrorism
6 as defined in Section 29D-30 of this Code.

7 (c) (Blank). ~~Consideration of factors in Aggravation and~~
8 ~~Mitigation.~~

9 ~~The court shall consider, or shall instruct the jury to~~
10 ~~consider any aggravating and any mitigating factors which are~~
11 ~~relevant to the imposition of the death penalty. Aggravating~~
12 ~~factors may include but need not be limited to those factors~~
13 ~~set forth in subsection (b). Mitigating factors may include but~~
14 ~~need not be limited to the following:~~

15 ~~(1) the defendant has no significant history of prior~~
16 ~~criminal activity;~~

17 ~~(2) the murder was committed while the defendant was~~
18 ~~under the influence of extreme mental or emotional~~
19 ~~disturbance, although not such as to constitute a defense~~
20 ~~to prosecution;~~

21 ~~(3) the murdered individual was a participant in the~~
22 ~~defendant's homicidal conduct or consented to the~~
23 ~~homicidal act;~~

24 ~~(4) the defendant acted under the compulsion of threat~~
25 ~~or menace of the imminent infliction of death or great~~
26 ~~bodily harm;~~

1 ~~(5) the defendant was not personally present during~~
2 ~~commission of the act or acts causing death;~~

3 ~~(6) the defendant's background includes a history of~~
4 ~~extreme emotional or physical abuse;~~

5 ~~(7) the defendant suffers from a reduced mental~~
6 ~~capacity.~~

7 (d) (Blank). ~~Separate sentencing hearing.~~

8 ~~Where requested by the State, the court shall conduct a~~
9 ~~separate sentencing proceeding to determine the existence of~~
10 ~~factors set forth in subsection (b) and to consider any~~
11 ~~aggravating or mitigating factors as indicated in subsection~~
12 ~~(c). The proceeding shall be conducted:~~

13 ~~(1) before the jury that determined the defendant's~~
14 ~~guilt; or~~

15 ~~(2) before a jury impanelled for the purpose of the~~
16 ~~proceeding if:~~

17 ~~A. the defendant was convicted upon a plea of~~
18 ~~guilty; or~~

19 ~~B. the defendant was convicted after a trial before~~
20 ~~the court sitting without a jury; or~~

21 ~~C. the court for good cause shown discharges the~~
22 ~~jury that determined the defendant's guilt; or~~

23 ~~(3) before the court alone if the defendant waives a~~
24 ~~jury for the separate proceeding.~~

25 (e) (Blank). ~~Evidence and Argument.~~

26 ~~During the proceeding any information relevant to any of~~

1 ~~the factors set forth in subsection (b) may be presented by~~
2 ~~either the State or the defendant under the rules governing the~~
3 ~~admission of evidence at criminal trials. Any information~~
4 ~~relevant to any additional aggravating factors or any~~
5 ~~mitigating factors indicated in subsection (c) may be presented~~
6 ~~by the State or defendant regardless of its admissibility under~~
7 ~~the rules governing the admission of evidence at criminal~~
8 ~~trials. The State and the defendant shall be given fair~~
9 ~~opportunity to rebut any information received at the hearing.~~

10 (f) (Blank). ~~Proof.~~

11 ~~The burden of proof of establishing the existence of any of~~
12 ~~the factors set forth in subsection (b) is on the State and~~
13 ~~shall not be satisfied unless established beyond a reasonable~~
14 ~~doubt.~~

15 (g) (Blank). ~~Procedure — Jury.~~

16 ~~If at the separate sentencing proceeding the jury finds~~
17 ~~that none of the factors set forth in subsection (b) exists,~~
18 ~~the court shall sentence the defendant to a term of~~
19 ~~imprisonment under Chapter V of the Unified Code of~~
20 ~~Corrections. If there is a unanimous finding by the jury that~~
21 ~~one or more of the factors set forth in subsection (b) exist,~~
22 ~~the jury shall consider aggravating and mitigating factors as~~
23 ~~instructed by the court and shall determine whether the~~
24 ~~sentence of death shall be imposed. If the jury determines~~
25 ~~unanimously, after weighing the factors in aggravation and~~
26 ~~mitigation, that death is the appropriate sentence, the court~~

1 ~~shall sentence the defendant to death. If the court does not~~
2 ~~concur with the jury determination that death is the~~
3 ~~appropriate sentence, the court shall set forth reasons in~~
4 ~~writing including what facts or circumstances the court relied~~
5 ~~upon, along with any relevant documents, that compelled the~~
6 ~~court to non concur with the sentence. This document and any~~
7 ~~attachments shall be part of the record for appellate review.~~
8 ~~The court shall be bound by the jury's sentencing~~
9 ~~determination.~~

10 ~~If after weighing the factors in aggravation and~~
11 ~~mitigation, one or more jurors determines that death is not the~~
12 ~~appropriate sentence, the court shall sentence the defendant to~~
13 ~~a term of imprisonment under Chapter V of the Unified Code of~~
14 ~~Corrections.~~

15 (h) (Blank). ~~Procedure - No Jury.~~

16 ~~In a proceeding before the court alone, if the court finds~~
17 ~~that none of the factors found in subsection (b) exists, the~~
18 ~~court shall sentence the defendant to a term of imprisonment~~
19 ~~under Chapter V of the Unified Code of Corrections.~~

20 ~~If the Court determines that one or more of the factors set~~
21 ~~forth in subsection (b) exists, the Court shall consider any~~
22 ~~aggravating and mitigating factors as indicated in subsection~~
23 ~~(c). If the Court determines, after weighing the factors in~~
24 ~~aggravation and mitigation, that death is the appropriate~~
25 ~~sentence, the Court shall sentence the defendant to death.~~

26 ~~If the court finds that death is not the appropriate~~

1 ~~sentence, the court shall sentence the defendant to a term of~~
2 ~~imprisonment under Chapter V of the Unified Code of~~
3 ~~Corrections.~~

4 (h-5) (Blank). ~~Decertification as a capital case.~~

5 ~~In a case in which the defendant has been found guilty of~~
6 ~~first degree murder by a judge or jury, or a case on remand for~~
7 ~~resentencing, and the State seeks the death penalty as an~~
8 ~~appropriate sentence, on the court's own motion or the written~~
9 ~~motion of the defendant, the court may decertify the case as a~~
10 ~~death penalty case if the court finds that the only evidence~~
11 ~~supporting the defendant's conviction is the uncorroborated~~
12 ~~testimony of an informant witness, as defined in Section 115-21~~
13 ~~of the Code of Criminal Procedure of 1963, concerning the~~
14 ~~confession or admission of the defendant or that the sole~~
15 ~~evidence against the defendant is a single eyewitness or single~~
16 ~~accomplice without any other corroborating evidence. If the~~
17 ~~court decertifies the case as a capital case under either of~~
18 ~~the grounds set forth above, the court shall issue a written~~
19 ~~finding. The State may pursue its right to appeal the~~
20 ~~decertification pursuant to Supreme Court Rule 604(a)(1). If~~
21 ~~the court does not decertify the case as a capital case, the~~
22 ~~matter shall proceed to the eligibility phase of the sentencing~~
23 ~~hearing.~~

24 (i) (Blank). ~~Appellate Procedure.~~

25 ~~The conviction and sentence of death shall be subject to~~
26 ~~automatic review by the Supreme Court. Such review shall be in~~

1 ~~accordance with rules promulgated by the Supreme Court. The~~
2 ~~Illinois Supreme Court may overturn the death sentence, and~~
3 ~~order the imposition of imprisonment under Chapter V of the~~
4 ~~Unified Code of Corrections if the court finds that the death~~
5 ~~sentence is fundamentally unjust as applied to the particular~~
6 ~~case. If the Illinois Supreme Court finds that the death~~
7 ~~sentence is fundamentally unjust as applied to the particular~~
8 ~~case, independent of any procedural grounds for relief, the~~
9 ~~Illinois Supreme Court shall issue a written opinion explaining~~
10 ~~this finding.~~

11 (j) (Blank). ~~Disposition of reversed death sentence.~~

12 ~~In the event that the death penalty in this Act is held to~~
13 ~~be unconstitutional by the Supreme Court of the United States~~
14 ~~or of the State of Illinois, any person convicted of first~~
15 ~~degree murder shall be sentenced by the court to a term of~~
16 ~~imprisonment under Chapter V of the Unified Code of~~
17 ~~Corrections.~~

18 ~~In the event that any death sentence pursuant to the~~
19 ~~sentencing provisions of this Section is declared~~
20 ~~unconstitutional by the Supreme Court of the United States or~~
21 ~~of the State of Illinois, the court having jurisdiction over a~~
22 ~~person previously sentenced to death shall cause the defendant~~
23 ~~to be brought before the court, and the court shall sentence~~
24 ~~the defendant to a term of imprisonment under Chapter V of the~~
25 ~~Unified Code of Corrections.~~

26 (k) (Blank). ~~Guidelines for seeking the death penalty.~~

1 The Attorney General and State's Attorneys Association
2 shall consult on voluntary guidelines for procedures governing
3 whether or not to seek the death penalty. The guidelines do not
4 have the force of law and are only advisory in nature.

5 (Source: P.A. 92-854, eff. 12-5-02; 93-605, eff. 11-19-03.)

6 (720 ILCS 5/9-1.2) (from Ch. 38, par. 9-1.2)

7 Sec. 9-1.2. Intentional Homicide of an Unborn Child.

8 (a) A person commits the offense of intentional homicide of
9 an unborn child if, in performing acts which cause the death of
10 an unborn child, he without lawful justification:

11 (1) either intended to cause the death of or do great
12 bodily harm to the pregnant woman or her unborn child or
13 knew that such acts would cause death or great bodily harm
14 to the pregnant woman or her unborn child; or

15 (2) he knew that his acts created a strong probability
16 of death or great bodily harm to the pregnant woman or her
17 unborn child; and

18 (3) he knew that the woman was pregnant.

19 (b) For purposes of this Section, (1) "unborn child" shall
20 mean any individual of the human species from fertilization
21 until birth, and (2) "person" shall not include the pregnant
22 woman whose unborn child is killed.

23 (c) This Section shall not apply to acts which cause the
24 death of an unborn child if those acts were committed during
25 any abortion, as defined in Section 2 of the Illinois Abortion

1 Law of 1975, as amended, to which the pregnant woman has
2 consented. This Section shall not apply to acts which were
3 committed pursuant to usual and customary standards of medical
4 practice during diagnostic testing or therapeutic treatment.

5 (d) Penalty. The sentence for intentional homicide of an
6 unborn child shall be the same as for first degree murder,
7 except that:

8 (1) (Blank); ~~the death penalty may not be imposed;~~

9 (2) if the person committed the offense while armed
10 with a firearm, 15 years shall be added to the term of
11 imprisonment imposed by the court;

12 (3) if, during the commission of the offense, the
13 person personally discharged a firearm, 20 years shall be
14 added to the term of imprisonment imposed by the court;

15 (4) if, during the commission of the offense, the
16 person personally discharged a firearm that proximately
17 caused great bodily harm, permanent disability, permanent
18 disfigurement, or death to another person, 25 years or up
19 to a term of natural life shall be added to the term of
20 imprisonment imposed by the court.

21 (e) The provisions of this Act shall not be construed to
22 prohibit the prosecution of any person under any other
23 provision of law.

24 (Source: P.A. 91-404, eff. 1-1-00.)

25 (720 ILCS 5/30-1) (from Ch. 38, par. 30-1)

1 Sec. 30-1. Treason. (a) A person owing allegiance to this
2 State commits treason when he or she knowingly:

3 (1) Levies war against this State; or

4 (2) Adheres to the enemies of this State, giving them
5 aid or comfort.

6 (b) No person may be convicted of treason except on the
7 testimony of 2 witnesses to the same overt act, or on his
8 confession in open court.

9 (c) Sentence. Treason is a Class X felony ~~for which an~~
10 ~~offender may be sentenced to death under Section 5-5-3 of the~~
11 ~~Unified Code of Corrections.~~

12 (Source: P.A. 80-1099.)

13 (720 ILCS 5/33B-1) (from Ch. 38, par. 33B-1)

14 Sec. 33B-1. (a) Every person who has been twice convicted
15 in any state or federal court of an offense that contains the
16 same elements as an offense now classified in Illinois as a
17 Class X felony, criminal sexual assault, aggravated kidnapping
18 or first degree murder, and is thereafter convicted of a Class
19 X felony, criminal sexual assault or first degree murder,
20 committed after the 2 prior convictions, shall be adjudged an
21 habitual criminal.

22 (b) The 2 prior convictions need not have been for the same
23 offense.

24 (c) Any convictions which result from or are connected with
25 the same transaction, or result from offenses committed at the

1 same time, shall be counted for the purposes of this Section as
2 one conviction.

3 (d) This Article shall not apply unless each of the
4 following requirements are satisfied:

5 (1) the third offense was committed after the effective
6 date of this Act;

7 (2) the third offense was committed within 20 years of
8 the date that judgment was entered on the first conviction,
9 provided, however, that time spent in custody shall not be
10 counted;

11 (3) the third offense was committed after conviction on
12 the second offense;

13 (4) the second offense was committed after conviction
14 on the first offense.

15 (e) ~~Except when the death penalty is imposed,~~ Anyone
16 adjudged an habitual criminal shall be sentenced to life
17 imprisonment.

18 (Source: P.A. 88-677, eff. 12-15-94.)

19 Section 40. The Cannabis Control Act is amended by changing
20 Section 9 as follows:

21 (720 ILCS 550/9) (from Ch. 56 1/2, par. 709)

22 Sec. 9. (a) Any person who engages in a calculated criminal
23 cannabis conspiracy, as defined in subsection (b), is guilty of
24 a Class 3 felony, and fined not more than \$200,000 and shall be

1 subject to the forfeitures prescribed in subsection (c); except
2 that, if any person engages in such offense after one or more
3 prior convictions under this Section, Section 4 (d), Section 5
4 (d), Section 8 (d) or any law of the United States or of any
5 State relating to cannabis, or controlled substances as defined
6 in the Illinois Controlled Substances Act, in addition to the
7 fine and forfeiture authorized above, he shall be guilty of a
8 Class 1 felony ~~for which an offender may not be sentenced to~~
9 ~~death.~~

10 (b) For purposes of this section, a person engages in a
11 calculated criminal cannabis conspiracy when:

12 (1) he violates Section 4 (d), 4 (e), 5 (d), 5 (e), 8 (c) or
13 8 (d) of this Act; and

14 (2) such violation is a part of a conspiracy undertaken or
15 carried on with 2 or more other persons; and

16 (3) he obtains anything of value greater than \$500 from, or
17 organizes, directs or finances such violation or conspiracy.

18 (c) Any person who is convicted under this Section of
19 engaging in a calculated criminal cannabis conspiracy shall
20 forfeit to the State of Illinois:

21 (1) the receipts obtained by him in such conspiracy; and

22 (2) any of his interests in, claims against, receipts from,
23 or property or rights of any kind affording a source of
24 influence over, such conspiracy.

25 (d) The circuit court may enter such injunctions,
26 restraining orders, directions, or prohibitions, or take such

1 other actions, including the acceptance of satisfactory
2 performance bonds, in connection with any property, claim,
3 receipt, right or other interest subject to forfeiture under
4 this Section, as it deems proper.

5 (Source: P.A. 84-1233.)

6 Section 45. The Code of Criminal Procedure of 1963 is
7 amended by changing Sections 104-26, 113-3, 114-5, 115-4,
8 115-4.1, 116-4, 119-5, 121-13, 122-1, 122-2.1, and 122-4 as
9 follows:

10 (725 ILCS 5/104-26) (from Ch. 38, par. 104-26)

11 Sec. 104-26. Disposition of Defendants suffering
12 disabilities.

13 (a) A defendant convicted following a trial conducted under
14 the provisions of Section 104-22 shall not be sentenced before
15 a written presentence report of investigation is presented to
16 and considered by the court. The presentence report shall be
17 prepared pursuant to Sections 5-3-2, 5-3-3 and 5-3-4 of the
18 Unified Code of Corrections, as now or hereafter amended, and
19 shall include a physical and mental examination unless the
20 court finds that the reports of prior physical and mental
21 examinations conducted pursuant to this Article are adequate
22 and recent enough so that additional examinations would be
23 unnecessary.

24 (b) (Blank). ~~A defendant convicted following a trial under~~

1 ~~Section 104-22 shall not be subject to the death penalty.~~

2 (c) A defendant convicted following a trial under Section
3 104-22 shall be sentenced according to the procedures and
4 dispositions authorized under the Unified Code of Corrections,
5 as now or hereafter amended, subject to the following
6 provisions:

7 (1) The court shall not impose a sentence of
8 imprisonment upon the offender if the court believes that
9 because of his disability a sentence of imprisonment would
10 not serve the ends of justice and the interests of society
11 and the offender or that because of his disability a
12 sentence of imprisonment would subject the offender to
13 excessive hardship. In addition to any other conditions of
14 a sentence of conditional discharge or probation the court
15 may require that the offender undergo treatment
16 appropriate to his mental or physical condition.

17 (2) After imposing a sentence of imprisonment upon an
18 offender who has a mental disability, the court may remand
19 him to the custody of the Department of Human Services and
20 order a hearing to be conducted pursuant to the provisions
21 of the Mental Health and Developmental Disabilities Code,
22 as now or hereafter amended. If the offender is committed
23 following such hearing, he shall be treated in the same
24 manner as any other civilly committed patient for all
25 purposes except as provided in this Section. If the
26 defendant is not committed pursuant to such hearing, he

1 shall be remanded to the sentencing court for disposition
2 according to the sentence imposed.

3 (3) If the court imposes a sentence of imprisonment
4 upon an offender who has a mental disability but does not
5 proceed under subparagraph (2) of paragraph (c) of this
6 Section, it shall order the Department of Corrections to
7 proceed pursuant to Section 3-8-5 of the Unified Code of
8 Corrections, as now or hereafter amended.

9 (4) If the court imposes a sentence of imprisonment
10 upon an offender who has a physical disability, it may
11 authorize the Department of Corrections to place the
12 offender in a public or private facility which is able to
13 provide care or treatment for the offender's disability and
14 which agrees to do so.

15 (5) When an offender is placed with the Department of
16 Human Services or another facility pursuant to
17 subparagraph (2) or (4) of this paragraph (c), the
18 Department or private facility shall not discharge or allow
19 the offender to be at large in the community without prior
20 approval of the court. If the defendant is placed in the
21 custody of the Department of Human Services, the defendant
22 shall be placed in a secure setting unless the court
23 determines that there are compelling reasons why such
24 placement is not necessary. The offender shall accrue good
25 time and shall be eligible for parole in the same manner as
26 if he were serving his sentence within the Department of

1 Corrections. When the offender no longer requires
2 hospitalization, care, or treatment, the Department of
3 Human Services or the facility shall transfer him, if his
4 sentence has not expired, to the Department of Corrections.
5 If an offender is transferred to the Department of
6 Corrections, the Department of Human Services shall
7 transfer to the Department of Corrections all related
8 records pertaining to length of custody and treatment
9 services provided during the time the offender was held.

10 (6) The Department of Corrections shall notify the
11 Department of Human Services or a facility in which an
12 offender has been placed pursuant to subparagraph (2) or
13 (4) of paragraph (c) of this Section of the expiration of
14 his sentence. Thereafter, an offender in the Department of
15 Human Services shall continue to be treated pursuant to his
16 commitment order and shall be considered a civilly
17 committed patient for all purposes including discharge. An
18 offender who is in a facility pursuant to subparagraph (4)
19 of paragraph (c) of this Section shall be informed by the
20 facility of the expiration of his sentence, and shall
21 either consent to the continuation of his care or treatment
22 by the facility or shall be discharged.

23 (Source: P.A. 89-507, eff. 7-1-97.)

24 (725 ILCS 5/113-3) (from Ch. 38, par. 113-3)

25 Sec. 113-3. (a) Every person charged with an offense shall

1 be allowed counsel before pleading to the charge. If the
2 defendant desires counsel and has been unable to obtain same
3 before arraignment the court shall recess court or continue the
4 cause for a reasonable time to permit defendant to obtain
5 counsel and consult with him before pleading to the charge. If
6 the accused is a dissolved corporation, and is not represented
7 by counsel, the court may, in the interest of justice, appoint
8 as counsel a licensed attorney of this State.

9 (b) In all cases, except where the penalty is a fine only,
10 if the court determines that the defendant is indigent and
11 desires counsel, the Public Defender shall be appointed as
12 counsel. If there is no Public Defender in the county or if the
13 defendant requests counsel other than the Public Defender and
14 the court finds that the rights of the defendant will be
15 prejudiced by the appointment of the Public Defender, the court
16 shall appoint as counsel a licensed attorney at law of this
17 State, except that in a county having a population of 2,000,000
18 ~~1,000,000~~ or more the Public Defender shall be appointed as
19 counsel in all misdemeanor cases where the defendant is
20 indigent and desires counsel unless the case involves multiple
21 defendants, in which case the court may appoint counsel other
22 than the Public Defender for the additional defendants. The
23 court shall require an affidavit signed by any defendant who
24 requests court-appointed counsel. Such affidavit shall be in
25 the form established by the Supreme Court containing sufficient
26 information to ascertain the assets and liabilities of that

1 defendant. The Court may direct the Clerk of the Circuit Court
2 to assist the defendant in the completion of the affidavit. Any
3 person who knowingly files such affidavit containing false
4 information concerning his assets and liabilities shall be
5 liable to the county where the case, in which such false
6 affidavit is filed, is pending for the reasonable value of the
7 services rendered by the public defender or other
8 court-appointed counsel in the case to the extent that such
9 services were unjustly or falsely procured.

10 (c) Upon the filing with the court of a verified statement
11 of services rendered the court shall order the county treasurer
12 of the county of trial to pay counsel other than the Public
13 Defender a reasonable fee. The court shall consider all
14 relevant circumstances, including but not limited to the time
15 spent while court is in session, other time spent in
16 representing the defendant, and expenses reasonably incurred
17 by counsel. In counties with a population greater than
18 2,000,000, the court shall order the county treasurer of the
19 county of trial to pay counsel other than the Public Defender a
20 reasonable fee stated in the order and based upon a rate of
21 compensation of not more than \$40 for each hour spent while
22 court is in session and not more than \$30 for each hour
23 otherwise spent representing a defendant, and such
24 compensation shall not exceed \$150 for each defendant
25 represented in misdemeanor cases and \$1250 in felony cases, in
26 addition to expenses reasonably incurred as hereinafter in this

1 Section provided, except that, in extraordinary circumstances,
2 payment in excess of the limits herein stated may be made if
3 the trial court certifies that such payment is necessary to
4 provide fair compensation for protracted representation. A
5 trial court may entertain the filing of this verified statement
6 before the termination of the cause, and may order the
7 provisional payment of sums during the pendency of the cause.

8 (d) (Blank). ~~In capital cases, in addition to counsel, if~~
9 ~~the court determines that the defendant is indigent the court~~
10 ~~may, upon the filing with the court of a verified statement of~~
11 ~~services rendered, order the county Treasurer of the county of~~
12 ~~trial to pay necessary expert witnesses for defendant~~
13 ~~reasonable compensation stated in the order not to exceed \$250~~
14 ~~for each defendant.~~

15 (e) If the court in any county having a population greater
16 than 2,000,000 ~~1,000,000~~ determines that the defendant is
17 indigent the court may, upon the filing with the court of a
18 verified statement of such expenses, order the county treasurer
19 of the county of trial, in such counties having a population
20 greater than 2,000,000 ~~1,000,000~~ to pay the general expenses of
21 the trial incurred by the defendant not to exceed \$50 for each
22 defendant.

23 (f) (Blank). ~~The provisions of this Section relating to~~
24 ~~appointment of counsel, compensation of counsel, and payment of~~
25 ~~expenses in capital cases apply except when the compensation~~
26 ~~and expenses are being provided under the Capital Crimes~~

1 ~~Litigation Act.~~

2 (Source: P.A. 91-589, eff. 1-1-00.)

3 (725 ILCS 5/114-5) (from Ch. 38, par. 114-5)

4 Sec. 114-5. Substitution of judge.

5 (a) Within 10 days after a cause involving only one
6 defendant has been placed on the trial call of a judge the
7 defendant may move the court in writing for a substitution of
8 that judge on the ground that such judge is so prejudiced
9 against him that he cannot receive a fair trial. Upon the
10 filing of such a motion the court shall proceed no further in
11 the cause but shall transfer it to another judge not named in
12 the motion. The defendant may name only one judge as
13 prejudiced, pursuant to this subsection; provided, however,
14 that in a case in which the offense charged is a Class X felony
15 or may be punished by ~~death or~~ life imprisonment, the defendant
16 may name two judges as prejudiced.

17 (b) Within 24 hours after a motion is made for substitution
18 of judge in a cause with multiple defendants each defendant
19 shall have the right to move in accordance with subsection (a)
20 of this Section for a substitution of one judge. The total
21 number of judges named as prejudiced by all defendants shall
22 not exceed the total number of defendants. The first motion for
23 substitution of judge in a cause with multiple defendants shall
24 be made within 10 days after the cause has been placed on the
25 trial call of a judge.

1 (c) Within 10 days after a cause has been placed on the
2 trial call of a judge the State may move the court in writing
3 for a substitution of that judge on the ground that such judge
4 is prejudiced against the State. Upon the filing of such a
5 motion the court shall proceed no further in the cause but
6 shall transfer it to another judge not named in the motion. The
7 State may name only one judge as prejudiced, pursuant to this
8 subsection.

9 (d) In addition to the provisions of subsections (a), (b)
10 and (c) of this Section the State or any defendant may move at
11 any time for substitution of judge for cause, supported by
12 affidavit. Upon the filing of such motion a hearing shall be
13 conducted as soon as possible after its filing by a judge not
14 named in the motion; provided, however, that the judge named in
15 the motion need not testify, but may submit an affidavit if the
16 judge wishes. If the motion is allowed, the case shall be
17 assigned to a judge not named in the motion. If the motion is
18 denied the case shall be assigned back to the judge named in
19 the motion.

20 (Source: P.A. 84-1428.)

21 (725 ILCS 5/115-4) (from Ch. 38, par. 115-4)

22 Sec. 115-4. Trial by Court and Jury.) (a) Questions of law
23 shall be decided by the court and questions of fact by the
24 jury.

25 (b) The jury shall consist of 12 members.

1 (c) Upon request the parties shall be furnished with a list
2 of prospective jurors with their addresses if known.

3 (d) Each party may challenge jurors for cause. If a
4 prospective juror has a physical impairment, the court shall
5 consider such prospective juror's ability to perceive and
6 appreciate the evidence when considering a challenge for cause.

7 (e) A defendant tried alone shall be allowed ~~20 peremptory~~
8 ~~challenges in a capital case,~~ 10 peremptory challenges in a
9 case in which the punishment may be imprisonment in the
10 penitentiary~~7~~ and 5 in all other cases; except that, in a
11 single trial of more than one defendant, each defendant shall
12 be allowed ~~12 peremptory challenges in a capital case,~~ 6
13 peremptory challenges in a case in which the punishment may be
14 imprisonment in the penitentiary~~7~~ and 3 in all other cases. If
15 several charges against a defendant or defendants are
16 consolidated for trial, each defendant shall be allowed
17 peremptory challenges upon one charge only, which single charge
18 shall be the charge against that defendant authorizing the
19 greatest maximum penalty. The State shall be allowed the same
20 number of peremptory challenges as all of the defendants.

21 (f) After examination by the court the jurors may be
22 examined, passed upon, accepted and tendered by opposing
23 counsel as provided by Supreme Court rules.

24 (g) After the jury is impaneled and sworn the court may
25 direct the selection of 2 alternate jurors who shall take the
26 same oath as the regular jurors. Each party shall have one

1 additional peremptory challenge for each alternate juror. If
2 before the final submission of a cause a member of the jury
3 dies or is discharged he shall be replaced by an alternate
4 juror in the order of selection.

5 (h) A trial by the court and jury shall be conducted in the
6 presence of the defendant unless he waives the right to be
7 present.

8 (i) After arguments of counsel the court shall instruct the
9 jury as to the law.

10 (j) Unless the affirmative defense of insanity has been
11 presented during the trial, the jury shall return a general
12 verdict as to each offense charged. When the affirmative
13 defense of insanity has been presented during the trial, the
14 court shall provide the jury not only with general verdict
15 forms but also with a special verdict form of not guilty by
16 reason of insanity, as to each offense charged, and in such
17 event the court shall separately instruct the jury that a
18 special verdict of not guilty by reason of insanity may be
19 returned instead of a general verdict but such special verdict
20 requires a unanimous finding by the jury that the defendant
21 committed the acts charged but at the time of the commission of
22 those acts the defendant was insane. In the event of a verdict
23 of not guilty by reason of insanity, a hearing shall be held
24 pursuant to the Mental Health and Developmental Disabilities
25 Code to determine whether the defendant is subject to
26 involuntary admission. When the affirmative defense of

1 insanity has been presented during the trial, the court, where
2 warranted by the evidence, shall also provide the jury with a
3 special verdict form of guilty but mentally ill, as to each
4 offense charged and shall separately instruct the jury that a
5 special verdict of guilty but mentally ill may be returned
6 instead of a general verdict, but that such special verdict
7 requires a unanimous finding by the jury that: (1) the State
8 has proven beyond a reasonable doubt that the defendant is
9 guilty of the offense charged; and (2) the defendant has failed
10 to prove his insanity as required in subsection (b) of Section
11 3-2 of the Criminal Code of 1961, as amended, and subsections
12 (a), (b) and (e) of Section 6-2 of the Criminal Code of 1961,
13 as amended; and (3) the defendant has proven by a preponderance
14 of the evidence that he was mentally ill, as defined in
15 subsections (c) and (d) of Section 6-2 of the Criminal Code of
16 1961, as amended, at the time of the offense.

17 (k) When, at the close of the State's evidence or at the
18 close of all of the evidence, the evidence is insufficient to
19 support a finding or verdict of guilty the court may and on
20 motion of the defendant shall make a finding or direct the jury
21 to return a verdict of not guilty, enter a judgment of
22 acquittal and discharge the defendant.

23 (l) When the jury retires to consider its verdict an
24 officer of the court shall be appointed to keep them together
25 and to prevent conversation between the jurors and others;
26 however, if any juror is deaf, the jury may be accompanied by

1 and may communicate with a court-appointed interpreter during
2 its deliberations. Upon agreement between the State and
3 defendant or his counsel the jury may seal and deliver its
4 verdict to the clerk of the court, separate, and then return
5 such verdict in open court at its next session.

6 (m) In the trial of an ~~a capital or other~~ offense, any
7 juror who is a member of a panel or jury which has been
8 impaneled and sworn as a panel or as a jury shall be permitted
9 to separate from other such jurors during every period of
10 adjournment to a later day, until final submission of the cause
11 to the jury for determination, except that no such separation
12 shall be permitted in any trial after the court, upon motion by
13 the defendant or the State or upon its own motion, finds a
14 probability that prejudice to the defendant or to the State
15 will result from such separation.

16 (n) The members of the jury shall be entitled to take notes
17 during the trial, and the sheriff of the county in which the
18 jury is sitting shall provide them with writing materials for
19 this purpose. Such notes shall remain confidential, and shall
20 be destroyed by the sheriff after the verdict has been returned
21 or a mistrial declared.

22 (o) A defendant tried by the court and jury shall only be
23 found guilty, guilty but mentally ill, not guilty or not guilty
24 by reason of insanity, upon the unanimous verdict of the jury.

25 (Source: P.A. 86-392.)

1 (725 ILCS 5/115-4.1) (from Ch. 38, par. 115-4.1)

2 Sec. 115-4.1. Absence of defendant.

3 (a) When a defendant after arrest and an initial court
4 appearance for a ~~non-capital~~ felony or a misdemeanor, fails to
5 appear for trial, at the request of the State and after the
6 State has affirmatively proven through substantial evidence
7 that the defendant is willfully avoiding trial, the court may
8 commence trial in the absence of the defendant. Absence of a
9 defendant as specified in this Section shall not be a bar to
10 indictment of a defendant, return of information against a
11 defendant, or arraignment of a defendant for the charge for
12 which bail has been granted. If a defendant fails to appear at
13 arraignment, the court may enter a plea of "not guilty" on his
14 behalf. ~~If a defendant absents himself before trial on a~~
15 ~~capital felony, trial may proceed as specified in this Section~~
16 ~~provided that the State certifies that it will not seek a death~~
17 ~~sentence following conviction.~~ Trial in the defendant's
18 absence shall be by jury unless the defendant had previously
19 waived trial by jury. The absent defendant must be represented
20 by retained or appointed counsel. The court, at the conclusion
21 of all of the proceedings, may order the clerk of the circuit
22 court to pay counsel such sum as the court deems reasonable,
23 from any bond monies which were posted by the defendant with
24 the clerk, after the clerk has first deducted all court costs.
25 If trial had previously commenced in the presence of the
26 defendant and the defendant willfully absents himself for two

1 successive court days, the court shall proceed to trial. All
2 procedural rights guaranteed by the United States
3 Constitution, Constitution of the State of Illinois, statutes
4 of the State of Illinois, and rules of court shall apply to the
5 proceedings the same as if the defendant were present in court
6 and had not either forfeited his bail bond or escaped from
7 custody. The court may set the case for a trial which may be
8 conducted under this Section despite the failure of the
9 defendant to appear at the hearing at which the trial date is
10 set. When such trial date is set the clerk shall send to the
11 defendant, by certified mail at his last known address
12 indicated on his bond slip, notice of the new date which has
13 been set for trial. Such notification shall be required when
14 the defendant was not personally present in open court at the
15 time when the case was set for trial.

16 (b) The absence of a defendant from a trial conducted
17 pursuant to this Section does not operate as a bar to
18 concluding the trial, to a judgment of conviction resulting
19 therefrom, or to a final disposition of the trial in favor of
20 the defendant.

21 (c) Upon a verdict of not guilty, the court shall enter
22 judgment for the defendant. Upon a verdict of guilty, the court
23 shall set a date for the hearing of post-trial motions and
24 shall hear such motion in the absence of the defendant. If
25 post-trial motions are denied, the court shall proceed to
26 conduct a sentencing hearing and to impose a sentence upon the

1 defendant.

2 (d) A defendant who is absent for part of the proceedings
3 of trial, post-trial motions, or sentencing, does not thereby
4 forfeit his right to be present at all remaining proceedings.

5 (e) When a defendant who in his absence has been either
6 convicted or sentenced or both convicted and sentenced appears
7 before the court, he must be granted a new trial or new
8 sentencing hearing if the defendant can establish that his
9 failure to appear in court was both without his fault and due
10 to circumstances beyond his control. A hearing with notice to
11 the State's Attorney on the defendant's request for a new trial
12 or a new sentencing hearing must be held before any such
13 request may be granted. At any such hearing both the defendant
14 and the State may present evidence.

15 (f) If the court grants only the defendant's request for a
16 new sentencing hearing, then a new sentencing hearing shall be
17 held in accordance with the provisions of the Unified Code of
18 Corrections. At any such hearing, both the defendant and the
19 State may offer evidence of the defendant's conduct during his
20 period of absence from the court. The court may impose any
21 sentence authorized by the Unified Code of Corrections and is
22 not in any way limited or restricted by any sentence previously
23 imposed.

24 (g) A defendant whose motion under paragraph (e) for a new
25 trial or new sentencing hearing has been denied may file a
26 notice of appeal therefrom. Such notice may also include a

1 request for review of the judgment and sentence not vacated by
2 the trial court.

3 (Source: P.A. 90-787, eff. 8-14-98.)

4 (725 ILCS 5/116-4)

5 Sec. 116-4. Preservation of evidence for forensic testing.

6 (a) Before or after the trial in a prosecution for a
7 violation of Section 12-13, 12-14, 12-14.1, 12-15, or 12-16 of
8 the Criminal Code of 1961 or in a prosecution for an offense
9 defined in Article 9 of that Code, or in a prosecution for an
10 attempt in violation of Section 8-4 of that Code of any of the
11 above-enumerated offenses, unless otherwise provided herein
12 under subsection (b) or (c), a law enforcement agency or an
13 agent acting on behalf of the law enforcement agency shall
14 preserve, subject to a continuous chain of custody, any
15 physical evidence in their possession or control that is
16 reasonably likely to contain forensic evidence, including, but
17 not limited to, fingerprints or biological material secured in
18 relation to a trial and with sufficient documentation to locate
19 that evidence.

20 (b) After a judgment of conviction is entered, the evidence
21 shall either be impounded with the Clerk of the Circuit Court
22 or shall be securely retained by a law enforcement agency.
23 Retention shall be permanent in cases where a sentence of
24 natural life imprisonment ~~death~~ is imposed. Retention shall be
25 until the completion of the sentence, including the period of

1 mandatory supervised release for the offense, or January 1,
2 2006, whichever is later, for any conviction for an offense or
3 an attempt of an offense defined in Article 9 of the Criminal
4 Code of 1961 or in Section 12-13, 12-14, 12-14.1, 12-15, or
5 12-16 of the Criminal Code of 1961 or for 7 years following any
6 conviction for any other felony for which the defendant's
7 genetic profile may be taken by a law enforcement agency and
8 submitted for comparison in a forensic DNA database for
9 unsolved offenses.

10 (c) After a judgment of conviction is entered, the law
11 enforcement agency required to retain evidence described in
12 subsection (a) may petition the court with notice to the
13 defendant or, in cases where the defendant has died, his
14 estate, his attorney of record, or an attorney appointed for
15 that purpose by the court for entry of an order allowing it to
16 dispose of evidence if, after a hearing, the court determines
17 by a preponderance of the evidence that:

18 (1) it has no significant value for forensic science
19 analysis and should be returned to its rightful owner,
20 destroyed, used for training purposes, or as otherwise
21 provided by law; or

22 (2) it has no significant value for forensic science
23 analysis and is of a size, bulk, or physical character not
24 usually retained by the law enforcement agency and cannot
25 practicably be retained by the law enforcement agency; or

26 (3) there no longer exists a reasonable basis to

1 require the preservation of the evidence because of the
2 death of the defendant; ~~however, this paragraph (3) does~~
3 ~~not apply if a sentence of death was imposed.~~

4 (d) The court may order the disposition of the evidence if
5 the defendant is allowed the opportunity to take reasonable
6 measures to remove or preserve portions of the evidence in
7 question for future testing.

8 (d-5) Any order allowing the disposition of evidence
9 pursuant to subsection (c) or (d) shall be a final and
10 appealable order. No evidence shall be disposed of until 30
11 days after the order is entered, and if a notice of appeal is
12 filed, no evidence shall be disposed of until the mandate has
13 been received by the circuit court from the appellate court.

14 (d-10) All records documenting the possession, control,
15 storage, and destruction of evidence and all police reports,
16 evidence control or inventory records, and other reports cited
17 in this Section, including computer records, must be retained
18 for as long as the evidence exists and may not be disposed of
19 without the approval of the Local Records Commission.

20 (e) In this Section, "law enforcement agency" includes any
21 of the following or an agent acting on behalf of any of the
22 following: a municipal police department, county sheriff's
23 office, any prosecuting authority, the Department of State
24 Police, or any other State, university, county, federal, or
25 municipal police unit or police force.

26 "Biological material" includes, but is not limited to, any

1 blood, hair, saliva, or semen from which genetic marker
2 groupings may be obtained.

3 (Source: P.A. 91-871, eff. 1-1-01; 92-459, eff. 8-22-01.)

4 (725 ILCS 5/119-5) (from Ch. 38, par. 119-5)

5 Sec. 119-5. ~~Execution of~~ Death sentence abolished
6 Sentence. On or after the effective date of this amendatory Act
7 of the 95th General Assembly no person may be executed in this
8 State.

9 ~~(a)(1) A defendant sentenced to death shall be executed by~~
10 ~~an intravenous administration of a lethal quantity of an~~
11 ~~ultrashort acting barbiturate in combination with a~~
12 ~~chemical paralytic agent and potassium chloride or other~~
13 ~~equally effective substances sufficient to cause death~~
14 ~~until death is pronounced by a coroner who is not a~~
15 ~~licensed physician.~~

16 ~~(2) If the execution of the sentence of death as~~
17 ~~provided in paragraph (1) is held illegal or~~
18 ~~unconstitutional by a reviewing court of competent~~
19 ~~jurisdiction, the sentence of death shall be carried out by~~
20 ~~electrocution.~~

21 ~~(b) In pronouncing the sentence of death the court shall~~
22 ~~set the date of the execution which shall be not less than 60~~
23 ~~nor more than 90 days from the date sentence is pronounced.~~

24 ~~(c) A sentence of death shall be executed at a Department~~
25 ~~of Corrections facility.~~

1 ~~(d) The warden of the penitentiary shall supervise such~~
2 ~~execution, which shall be conducted in the presence of 6~~
3 ~~witnesses who shall certify the execution of the sentence. The~~
4 ~~certification shall be filed with the clerk of the court that~~
5 ~~imposed the sentence.~~

6 ~~(d 5) The Department of Corrections shall not request,~~
7 ~~require, or allow a health care practitioner licensed in~~
8 ~~Illinois, including but not limited to physicians and nurses,~~
9 ~~regardless of employment, to participate in an execution.~~

10 ~~(e) Except as otherwise provided in this subsection (e),~~
11 ~~the identity of executioners and other persons who participate~~
12 ~~or perform ancillary functions in an execution and information~~
13 ~~contained in records that would identify those persons shall~~
14 ~~remain confidential, shall not be subject to disclosure, and~~
15 ~~shall not be admissible as evidence or be discoverable in any~~
16 ~~action of any kind in any court or before any tribunal, board,~~
17 ~~agency, or person. In order to protect the confidentiality of~~
18 ~~persons participating in an execution, the Director of~~
19 ~~Corrections may direct that the Department make payments in~~
20 ~~cash for such services. In confidential investigations by the~~
21 ~~Department of Professional Regulation, the Department of~~
22 ~~Corrections shall disclose the names and license numbers of~~
23 ~~health care practitioners participating or performing~~
24 ~~ancillary functions in an execution to the Department of~~
25 ~~Professional Regulation and the Department of Professional~~
26 ~~Regulation shall forward those names and license numbers to the~~

1 ~~appropriate disciplinary boards.~~

2 ~~(f) The amendatory changes to this Section made by this~~
3 ~~amendatory Act of 1991 are severable under Section 1.31 of the~~
4 ~~Statute on Statutes.~~

5 ~~(g) (Blank).~~

6 ~~(h) Notwithstanding any other provision of law, any~~
7 ~~pharmaceutical supplier is authorized to dispense drugs to the~~
8 ~~Director of Corrections or his or her designee, without~~
9 ~~prescription, in order to carry out the provisions of this~~
10 ~~Section.~~

11 ~~(i) The amendatory changes to this Section made by this~~
12 ~~amendatory Act of the 93rd General Assembly are severable under~~
13 ~~Section 1.31 of the Statute on Statutes.~~

14 (Source: P.A. 93-379, eff. 7-24-03.)

15 (725 ILCS 5/121-13) (from Ch. 38, par. 121-13)

16 Sec. 121-13. Pauper Appeals.

17 (a) In any case wherein the defendant was convicted of a
18 felony, if the court determines that the defendant desires
19 counsel on appeal but is indigent the Public Defender or the
20 State Appellate Defender shall be appointed as counsel, unless
21 with the consent of the defendant and for good cause shown, the
22 court may appoint counsel other than the Public Defender or the
23 State Appellate Defender.

24 (b) In any case wherein the defendant was convicted of a
25 felony ~~and a sentence of death was not imposed~~ in the trial

1 court the reviewing court, upon petition of the defendant's
2 counsel made not more frequently than every 60 days after
3 appointment, shall determine a reasonable amount to be allowed
4 an indigent defendant's counsel other than the Public Defender
5 or the State Appellate Defender for compensation and
6 reimbursement of expenditures necessarily incurred in the
7 prosecution of the appeal or review proceedings. The
8 compensation shall not exceed \$1500 in each case, except that,
9 in extraordinary circumstances, payment in excess of the limits
10 herein stated may be made if the reviewing court certifies that
11 the payment is necessary to provide fair compensation for
12 protracted representation. The reviewing court shall enter an
13 order directing the county treasurer of the county where the
14 case was tried to pay the amount allowed by the court. The
15 reviewing court may order the provisional payment of sums
16 during the pendency of the cause.

17 (c) In any case in which a sentence of death was imposed in
18 the trial court before the effective date of this amendatory
19 Act of the 95th General Assembly, the Supreme Court, upon
20 written petition of the defendant's counsel made not more than
21 every 60 days after appointment, shall determine reasonable
22 compensation for an indigent defendant's attorneys on appeal.
23 The compensation shall not exceed \$2,000 in each case, except
24 that, in extraordinary circumstances, payment in excess of the
25 limits herein stated may be made if the reviewing court
26 certifies that the payment is necessary to provide fair

1 compensation for protracted representation. The Supreme Court
2 shall enter an order directing the county treasurer of the
3 county where the case was tried to pay compensation and
4 reimburse expenditures necessarily incurred in the prosecution
5 of the appeal or review proceedings. The Supreme Court may
6 order the provisional payment of sums during the pendency of
7 the cause.

8 (Source: P.A. 86-318; 87-580.)

9 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

10 Sec. 122-1. Petition in the trial court.

11 (a) Any person imprisoned in the penitentiary may institute
12 a proceeding under this Article if the person asserts that:

13 (1) in the proceedings which resulted in his or her
14 conviction there was a substantial denial of his or her
15 rights under the Constitution of the United States or of
16 the State of Illinois or both; or

17 (2) the death penalty was imposed before the effective
18 date of this amendatory Act of the 95th General Assembly
19 and there is newly discovered evidence not available to the
20 person at the time of the proceeding that resulted in his
21 or her conviction that establishes a substantial basis to
22 believe that the defendant is actually innocent by clear
23 and convincing evidence.

24 (a-5) A proceeding under paragraph (2) of subsection (a)
25 may be commenced within a reasonable period of time after the

1 person's conviction notwithstanding any other provisions of
2 this Article. In such a proceeding regarding actual innocence,
3 if the court determines the petition is frivolous or is
4 patently without merit, it shall dismiss the petition in a
5 written order, specifying the findings of fact and conclusions
6 of law it made in reaching its decision. Such order of
7 dismissal is a final judgment and shall be served upon the
8 petitioner by certified mail within 10 days of its entry.

9 (b) The proceeding shall be commenced by filing with the
10 clerk of the court in which the conviction took place a
11 petition (together with a copy thereof) verified by affidavit.
12 Petitioner shall also serve another copy upon the State's
13 Attorney by any of the methods provided in Rule 7 of the
14 Supreme Court. The clerk shall docket the petition for
15 consideration by the court pursuant to Section 122-2.1 upon his
16 or her receipt thereof and bring the same promptly to the
17 attention of the court.

18 (c) Except as otherwise provided in subsection (a-5), if
19 the petitioner is under sentence of death before the effective
20 date of this amendatory Act of the 95th General Assembly and a
21 petition for writ of certiorari is filed, no proceedings under
22 this Article shall be commenced more than 6 months after the
23 conclusion of proceedings in the United States Supreme Court,
24 unless the petitioner alleges facts showing that the delay was
25 not due to his or her culpable negligence. If a petition for
26 certiorari is not filed, no proceedings under this Article

1 shall be commenced more than 6 months from the date for filing
2 a certiorari petition, unless the petitioner alleges facts
3 showing that the delay was not due to his or her culpable
4 negligence.

5 When a defendant has a sentence other than death, no
6 proceedings under this Article shall be commenced more than 6
7 months after the conclusion of proceedings in the United States
8 Supreme Court, unless the petitioner alleges facts showing that
9 the delay was not due to his or her culpable negligence. If a
10 petition for certiorari is not filed, no proceedings under this
11 Article shall be commenced more than 6 months from the date for
12 filing a certiorari petition, unless the petitioner alleges
13 facts showing that the delay was not due to his or her culpable
14 negligence. If a defendant does not file a direct appeal, the
15 post-conviction petition shall be filed no later than 3 years
16 from the date of conviction, unless the petitioner alleges
17 facts showing that the delay was not due to his or her culpable
18 negligence.

19 This limitation does not apply to a petition advancing a
20 claim of actual innocence.

21 (d) A person seeking relief by filing a petition under this
22 Section must specify in the petition or its heading that it is
23 filed under this Section. A trial court that has received a
24 petition complaining of a conviction or sentence that fails to
25 specify in the petition or its heading that it is filed under
26 this Section need not evaluate the petition to determine

1 whether it could otherwise have stated some grounds for relief
2 under this Article.

3 (e) (Blank). ~~A proceeding under this Article may not be~~
4 ~~commenced on behalf of a defendant who has been sentenced to~~
5 ~~death without the written consent of the defendant, unless the~~
6 ~~defendant, because of a mental or physical condition, is~~
7 ~~incapable of asserting his or her own claim.~~

8 (f) Only one petition may be filed by a petitioner under
9 this Article without leave of the court. Leave of court may be
10 granted only if a petitioner demonstrates cause for his or her
11 failure to bring the claim in his or her initial
12 post-conviction proceedings and prejudice results from that
13 failure. For purposes of this subsection (f): (1) a prisoner
14 shows cause by identifying an objective factor that impeded his
15 or her ability to raise a specific claim during his or her
16 initial post-conviction proceedings; and (2) a prisoner shows
17 prejudice by demonstrating that the claim not raised during his
18 or her initial post-conviction proceedings so infected the
19 trial that the resulting conviction or sentence violated due
20 process.

21 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;
22 93-972, eff. 8-20-04.)

23 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

24 Sec. 122-2.1. (a) Within 90 days after the filing and
25 docketing of each petition, the court shall examine such

1 petition and enter an order thereon pursuant to this Section.

2 (1) If the petitioner is under sentence of death
3 imposed before the effective date of this amendatory Act of
4 the 95th General Assembly and is without counsel and
5 alleges that he is without means to procure counsel, he
6 shall state whether or not he wishes counsel to be
7 appointed to represent him. If appointment of counsel is so
8 requested, the court shall appoint counsel if satisfied
9 that the petitioner has no means to procure counsel.

10 (2) If the petitioner is sentenced to imprisonment and
11 the court determines the petition is frivolous or is
12 patently without merit, it shall dismiss the petition in a
13 written order, specifying the findings of fact and
14 conclusions of law it made in reaching its decision. Such
15 order of dismissal is a final judgment and shall be served
16 upon the petitioner by certified mail within 10 days of its
17 entry.

18 (b) If the petition is not dismissed pursuant to this
19 Section, the court shall order the petition to be docketed for
20 further consideration in accordance with Sections 122-4
21 through 122-6. If the petitioner is under sentence of death
22 imposed before the effective date of this amendatory Act of the
23 95th General Assembly, the court shall order the petition to be
24 docketed for further consideration and hearing within one year
25 of the filing of the petition. Continuances may be granted as
26 the court deems appropriate.

1 (c) In considering a petition pursuant to this Section, the
2 court may examine the court file of the proceeding in which the
3 petitioner was convicted, any action taken by an appellate
4 court in such proceeding and any transcripts of such
5 proceeding.

6 (Source: P.A. 93-605, eff. 11-19-03.)

7 (725 ILCS 5/122-4) (from Ch. 38, par. 122-4)

8 Sec. 122-4. Pauper Petitions. If the petition is not
9 dismissed pursuant to Section 122-2.1, and alleges that the
10 petitioner is unable to pay the costs of the proceeding, the
11 court may order that the petitioner be permitted to proceed as
12 a poor person and order a transcript of the proceedings
13 delivered to petitioner in accordance with Rule of the Supreme
14 Court. If the petitioner is without counsel and alleges that he
15 is without means to procure counsel, he shall state whether or
16 not he wishes counsel to be appointed to represent him. If
17 appointment of counsel is so requested, and the petition is not
18 dismissed pursuant to Section 122-2.1, the court shall appoint
19 counsel if satisfied that the petitioner has no means to
20 procure counsel. A petitioner who is a prisoner in an Illinois
21 Department of Corrections facility who files a pleading,
22 motion, or other filing that purports to be a legal document
23 seeking post-conviction relief under this Article against the
24 State, the Illinois Department of Corrections, the Prisoner
25 Review Board, or any of their officers or employees in which

1 the court makes a specific finding that the pleading, motion,
2 or other filing that purports to be a legal document is
3 frivolous shall not proceed as a poor person and shall be
4 liable for the full payment of filing fees and actual court
5 costs as provided in Article XXII of the Code of Civil
6 Procedure.

7 A Circuit Court or the Illinois Supreme Court may appoint
8 the State Appellate Defender to provide post-conviction
9 representation in a case in which the defendant was is
10 sentenced to death before the effective date of this amendatory
11 Act of the 95th General Assembly. Any attorney assigned by the
12 Office of the State Appellate Defender to provide
13 post-conviction representation for indigent defendants in
14 cases in which a sentence of death was imposed in the trial
15 court before the effective date of this amendatory Act of the
16 95th General Assembly may, from time to time submit bills and
17 time sheets to the Office of the State Appellate Defender for
18 payment of services rendered and the Office of the State
19 Appellate Defender shall pay bills from funds appropriated for
20 this purpose in accordance with rules promulgated by the State
21 Appellate Defender.

22 The court, at the conclusion of the proceedings upon
23 receipt of a petition by the appointed counsel, shall determine
24 a reasonable amount to be allowed an indigent defendant's
25 counsel other than the Public Defender or the State Appellate
26 Defender for compensation and reimbursement of expenditures

1 necessarily incurred in the proceedings. The compensation
2 shall not exceed \$500 in each case, except that, in
3 extraordinary circumstances, payment in excess of the limits
4 herein stated may be made if the trial court certifies that the
5 payment is necessary to provide fair compensation for
6 protracted representation, and the amount is approved by the
7 chief judge of the circuit. The court shall enter an order
8 directing the county treasurer of the county where the case was
9 tried to pay the amount thereby allowed by the court. The court
10 may order the provisional payment of sums during the pendency
11 of the cause.

12 (Source: P.A. 90-505, eff. 8-19-97.)

13 (725 ILCS 5/122-2.2 rep.)

14 Section 46. The Code of Criminal Procedure of 1963 is
15 amended by repealing Section 122-2.2.

16 Section 50. The State Appellate Defender Act is amended by
17 changing Sections 10 and 10.5 as follows:

18 (725 ILCS 105/10) (from Ch. 38, par. 208-10)

19 Sec. 10. Powers and duties of State Appellate Defender.

20 (a) The State Appellate Defender shall represent indigent
21 persons on appeal in criminal and delinquent minor proceedings,
22 when appointed to do so by a court under a Supreme Court Rule
23 or law of this State.

1 (b) The State Appellate Defender shall submit a budget for
2 the approval of the State Appellate Defender Commission.

3 (c) The State Appellate Defender may:

4 (1) maintain a panel of private attorneys available to
5 serve as counsel on a case basis;

6 (2) establish programs, alone or in conjunction with
7 law schools, for the purpose of utilizing volunteer law
8 students as legal assistants;

9 (3) cooperate and consult with state agencies,
10 professional associations, and other groups concerning the
11 causes of criminal conduct, the rehabilitation and
12 correction of persons charged with and convicted of crime,
13 the administration of criminal justice, and, in counties of
14 less than 1,000,000 population, study, design, develop and
15 implement model systems for the delivery of trial level
16 defender services, and make an annual report to the General
17 Assembly;

18 (4) hire investigators to provide investigative
19 services to appointed counsel and county public defenders;

20 (blank). ~~(5) in cases in which a death sentence is an~~
21 ~~authorized disposition, provide trial counsel with legal~~
22 ~~advice and the assistance of expert witnesses,~~
23 ~~investigators, and mitigation specialists from funds~~
24 ~~appropriated to the State Appellate Defender specifically~~
25 ~~for that purpose by the General Assembly. The Office of~~
26 ~~State Appellate Defender shall not be appointed to serve as~~

1 ~~trial counsel in capital cases.~~

2 Investigators employed by the Death Penalty Trial
3 Assistance and Capital Litigation Division of the State
4 Appellate Defender before the effective date of this amendatory
5 Act of the 95th General Assembly shall be authorized to inquire
6 through the Illinois State Police or local law enforcement with
7 the Law Enforcement Agencies Data System (LEADS) under Section
8 2605-375 of the Civil Administrative Code of Illinois to
9 ascertain whether their potential witnesses have a criminal
10 background, including: (i) warrants; (ii) arrests; (iii)
11 convictions; and (iv) officer safety information. This
12 authorization applies only to information held on the State
13 level and shall be used only to protect the personal safety of
14 the investigators. Any information that is obtained through
15 this inquiry may not be disclosed by the investigators.

16 (Blank). ~~(d) For each State fiscal year, the State~~
17 ~~Appellate Defender shall appear before the General Assembly and~~
18 ~~request appropriations to be made from the Capital Litigation~~
19 ~~Trust Fund to the State Treasurer for the purpose of providing~~
20 ~~defense assistance in capital cases outside of Cook County and~~
21 ~~for expenses incurred by the State Appellate Defender in~~
22 ~~representing petitioners in capital cases in post-conviction~~
23 ~~proceedings under Article 122 of the Code of Criminal Procedure~~
24 ~~of 1963 and in relation to petitions filed under Section 2-1401~~
25 ~~of the Code of Civil Procedure in relation to capital cases and~~
26 ~~for the representation of those petitioners by attorneys~~

1 ~~approved by or contracted with the State Appellate Defender.~~
2 ~~The State Appellate Defender may appear before the General~~
3 ~~Assembly at other times during the State's fiscal year to~~
4 ~~request supplemental appropriations from the Trust Fund to the~~
5 ~~State Treasurer.~~

6 (e) The requirement for reporting to the General Assembly
7 shall be satisfied by filing copies of the report with the
8 Speaker, the Minority Leader and the Clerk of the House of
9 Representatives and the President, the Minority Leader and the
10 Secretary of the Senate and the Legislative Research Unit, as
11 required by Section 3.1 of the General Assembly Organization
12 Act and filing such additional copies with the State Government
13 Report Distribution Center for the General Assembly as is
14 required under paragraph (t) of Section 7 of the State Library
15 Act.

16 (Source: P.A. 93-972, eff. 8-20-04; 93-1011, eff. 1-1-05;
17 94-340, eff. 1-1-06.)

18 (725 ILCS 105/10.5)

19 Sec. 10.5. Competitive bidding for appellate services.

20 (a) The State Appellate Defender may, to the extent
21 necessary to dispose of its backlog of indigent criminal
22 appeals, institute a competitive bidding program under which
23 contracts for the services of attorneys in ~~non-death penalty~~
24 criminal appeals are awarded to the lowest responsible bidder.

25 (b) The State Appellate Defender, before letting out bids

1 for contracts for the services of attorneys to represent
2 indigent defendants on appeal in criminal cases, shall
3 advertise the letting of the bids in a publication or
4 publications of the Illinois State Bar Association, the Chicago
5 Daily Law Bulletin, and the Chicago Lawyer. The State Appellate
6 Defender shall also advertise the letting of the bids in
7 newspapers of general circulation in major municipalities to be
8 determined by the State Appellate Defender. The State Appellate
9 Defender shall mail notices of the letting of the bids to
10 county and local bar associations.

11 (c) Bids may be let in packages of one to 5, appeals.
12 Additional cases may be assigned, in the discretion of the
13 State Appellate Defender, after a successful bidder completes
14 work on existing packages.

15 (d) A bid for services of an attorney under this Section
16 shall be let only to an attorney licensed to practice law in
17 Illinois who has prior criminal appellate experience or to an
18 attorney who is a member or employee of a law firm which has at
19 least one member with that experience. Prospective bidders must
20 furnish legal writing samples that are deemed acceptable to the
21 State Appellate Defender.

22 (e) An attorney who is awarded a contract under this
23 Section shall communicate with each of his or her clients and
24 shall file each initial brief before the due date established
25 by Supreme Court Rule or by the Appellate Court. The State
26 Appellate Defender may rescind the contract for attorney

1 services and may require the return of the record on appeal if
2 the contracted attorney fails to make satisfactory progress, in
3 the opinion of the State Appellate Defender, toward filing a
4 brief.

5 (f) Gross compensation for completing of a case shall be
6 \$40 per hour but shall not exceed \$2,000 per case. The contract
7 shall specify the manner of payment.

8 (g) (Blank).

9 (h) (Blank).

10 (Source: P.A. 89-689, eff. 12-31-96; 90-505, eff. 8-19-97.)

11 (725 ILCS 124/Act rep.)

12 Section 55. The Capital Crimes Litigation Act is repealed
13 on July 1, 2003.

14 Section 60. The Uniform Rendition of Prisoners as Witnesses
15 in Criminal Proceedings Act is amended by changing Section 5 as
16 follows:

17 (725 ILCS 235/5) (from Ch. 38, par. 157-5)

18 Sec. 5. Exceptions.

19 This act does not apply to any person in this State
20 confined as mentally ill or in need of mental treatment, ~~or~~
21 ~~under sentence of death.~~

22 (Source: Laws 1963, p. 2171.)

1 Section 65. The Unified Code of Corrections is amended by
2 changing Sections 3-3-13, 3-6-3, 3-8-10, 5-1-9, 5-4-1, 5-4-3,
3 5-5-3, 5-8-1, 5-8-4, and 5-8-5 as follows:

4 (730 ILCS 5/3-3-13) (from Ch. 38, par. 1003-3-13)

5 Sec. 3-3-13. Procedure for Executive Clemency.

6 (a) Petitions seeking pardon, commutation, or reprieve
7 shall be addressed to the Governor and filed with the Prisoner
8 Review Board. The petition shall be in writing and signed by
9 the person under conviction or by a person on his behalf. It
10 shall contain a brief history of the case, the reasons for
11 seeking executive clemency, and other relevant information the
12 Board may require.

13 (a-5) After a petition has been denied by the Governor, the
14 Board may not accept a repeat petition for executive clemency
15 for the same person until one full year has elapsed from the
16 date of the denial. The Chairman of the Board may waive the
17 one-year requirement if the petitioner offers in writing new
18 information that was unavailable to the petitioner at the time
19 of the filing of the prior petition and which the Chairman
20 determines to be significant. The Chairman also may waive the
21 one-year waiting period if the petitioner can show that a
22 change in circumstances of a compelling humanitarian nature has
23 arisen since the denial of the prior petition.

24 (b) Notice of the proposed application shall be given by
25 the Board to the committing court and the state's attorney of

1 the county where the conviction was had.

2 (c) The Board shall, if requested and upon due notice, give
3 a hearing to each application, allowing representation by
4 counsel, if desired, after which it shall confidentially advise
5 the Governor by a written report of its recommendations which
6 shall be determined by majority vote. The Board shall meet to
7 consider such petitions no less than 4 times each year.

8 ~~Application for executive clemency under this Section may~~
9 ~~not be commenced on behalf of a person who has been sentenced~~
10 ~~to death without the written consent of the defendant, unless~~
11 ~~the defendant, because of a mental or physical condition, is~~
12 ~~incapable of asserting his or her own claim.~~

13 (d) The Governor shall decide each application and
14 communicate his decision to the Board which shall notify the
15 petitioner.

16 In the event a petitioner who has been convicted of a Class
17 X felony is granted a release, after the Governor has
18 communicated such decision to the Board, the Board shall give
19 written notice to the Sheriff of the county from which the
20 offender was sentenced if such sheriff has requested that such
21 notice be given on a continuing basis. In cases where arrest of
22 the offender or the commission of the offense took place in any
23 municipality with a population of more than 10,000 persons, the
24 Board shall also give written notice to the proper law
25 enforcement agency for said municipality which has requested
26 notice on a continuing basis.

1 (e) Nothing in this Section shall be construed to limit the
2 power of the Governor under the constitution to grant a
3 reprieve, commutation of sentence, or pardon.

4 (Source: P.A. 89-112, eff. 7-7-95; 89-684, eff. 6-1-97.)

5 (730 ILCS 5/3-6-3) (from Ch. 38, par. 1003-6-3)

6 Sec. 3-6-3. Rules and Regulations for Early Release.

7 (a) (1) The Department of Corrections shall prescribe
8 rules and regulations for the early release on account of
9 good conduct of persons committed to the Department which
10 shall be subject to review by the Prisoner Review Board.

11 (2) The rules and regulations on early release shall
12 provide, with respect to offenses listed in clause (i),
13 (ii), or (iii) of this paragraph (2) committed on or after
14 June 19, 1998 or with respect to the offense listed in
15 clause (iv) of this paragraph (2) committed on or after
16 June 23, 2005 (the effective date of Public Act 94-71) or
17 with respect to the offense of being an armed habitual
18 criminal committed on or after August 2, 2005 (the
19 effective date of Public Act 94-398), the following:

20 (i) that a prisoner who is serving a term of
21 imprisonment for first degree murder or for the offense
22 of terrorism shall receive no good conduct credit and
23 shall serve the entire sentence imposed by the court;

24 (ii) that a prisoner serving a sentence for attempt
25 to commit first degree murder, solicitation of murder,

1 solicitation of murder for hire, intentional homicide
2 of an unborn child, predatory criminal sexual assault
3 of a child, aggravated criminal sexual assault,
4 criminal sexual assault, aggravated kidnapping,
5 aggravated battery with a firearm, heinous battery,
6 being an armed habitual criminal, aggravated battery
7 of a senior citizen, or aggravated battery of a child
8 shall receive no more than 4.5 days of good conduct
9 credit for each month of his or her sentence of
10 imprisonment;

11 (iii) that a prisoner serving a sentence for home
12 invasion, armed robbery, aggravated vehicular
13 hijacking, aggravated discharge of a firearm, or armed
14 violence with a category I weapon or category II
15 weapon, when the court has made and entered a finding,
16 pursuant to subsection (c-1) of Section 5-4-1 of this
17 Code, that the conduct leading to conviction for the
18 enumerated offense resulted in great bodily harm to a
19 victim, shall receive no more than 4.5 days of good
20 conduct credit for each month of his or her sentence of
21 imprisonment; and

22 (iv) that a prisoner serving a sentence for
23 aggravated discharge of a firearm, whether or not the
24 conduct leading to conviction for the offense resulted
25 in great bodily harm to the victim, shall receive no
26 more than 4.5 days of good conduct credit for each

1 month of his or her sentence of imprisonment.

2 (2.1) For all offenses, other than those enumerated in
3 subdivision (a)(2)(i), (ii), or (iii) committed on or after
4 June 19, 1998 or subdivision (a)(2)(iv) committed on or
5 after June 23, 2005 (the effective date of Public Act
6 94-71), and other than the offense of reckless homicide as
7 defined in subsection (e) of Section 9-3 of the Criminal
8 Code of 1961 committed on or after January 1, 1999, or
9 aggravated driving under the influence of alcohol, other
10 drug or drugs, or intoxicating compound or compounds, or
11 any combination thereof as defined in subparagraph (F) of
12 paragraph (1) of subsection (d) of Section 11-501 of the
13 Illinois Vehicle Code, the rules and regulations shall
14 provide that a prisoner who is serving a term of
15 imprisonment shall receive one day of good conduct credit
16 for each day of his or her sentence of imprisonment or
17 recommitment under Section 3-3-9. Each day of good conduct
18 credit shall reduce by one day the prisoner's period of
19 imprisonment or recommitment under Section 3-3-9.

20 (2.2) A prisoner serving a term of natural life
21 imprisonment ~~or a prisoner who has been sentenced to death~~
22 shall receive no good conduct credit.

23 (2.3) The rules and regulations on early release shall
24 provide that a prisoner who is serving a sentence for
25 reckless homicide as defined in subsection (e) of Section
26 9-3 of the Criminal Code of 1961 committed on or after

1 January 1, 1999, or aggravated driving under the influence
2 of alcohol, other drug or drugs, or intoxicating compound
3 or compounds, or any combination thereof as defined in
4 subparagraph (F) of paragraph (1) of subsection (d) of
5 Section 11-501 of the Illinois Vehicle Code, shall receive
6 no more than 4.5 days of good conduct credit for each month
7 of his or her sentence of imprisonment.

8 (2.4) The rules and regulations on early release shall
9 provide with respect to the offenses of aggravated battery
10 with a machine gun or a firearm equipped with any device or
11 attachment designed or used for silencing the report of a
12 firearm or aggravated discharge of a machine gun or a
13 firearm equipped with any device or attachment designed or
14 used for silencing the report of a firearm, committed on or
15 after July 15, 1999 (the effective date of Public Act
16 91-121), that a prisoner serving a sentence for any of
17 these offenses shall receive no more than 4.5 days of good
18 conduct credit for each month of his or her sentence of
19 imprisonment.

20 (2.5) The rules and regulations on early release shall
21 provide that a prisoner who is serving a sentence for
22 aggravated arson committed on or after July 27, 2001 (the
23 effective date of Public Act 92-176) shall receive no more
24 than 4.5 days of good conduct credit for each month of his
25 or her sentence of imprisonment.

26 (3) The rules and regulations shall also provide that

1 the Director may award up to 180 days additional good
2 conduct credit for meritorious service in specific
3 instances as the Director deems proper; except that no more
4 than 90 days of good conduct credit for meritorious service
5 shall be awarded to any prisoner who is serving a sentence
6 for conviction of first degree murder, reckless homicide
7 while under the influence of alcohol or any other drug, or
8 aggravated driving under the influence of alcohol, other
9 drug or drugs, or intoxicating compound or compounds, or
10 any combination thereof as defined in subparagraph (F) of
11 paragraph (1) of subsection (d) of Section 11-501 of the
12 Illinois Vehicle Code, aggravated kidnapping, kidnapping,
13 predatory criminal sexual assault of a child, aggravated
14 criminal sexual assault, criminal sexual assault, deviate
15 sexual assault, aggravated criminal sexual abuse,
16 aggravated indecent liberties with a child, indecent
17 liberties with a child, child pornography, heinous
18 battery, aggravated battery of a spouse, aggravated
19 battery of a spouse with a firearm, stalking, aggravated
20 stalking, aggravated battery of a child, endangering the
21 life or health of a child, cruelty to a child, or narcotic
22 racketeering. Notwithstanding the foregoing, good conduct
23 credit for meritorious service shall not be awarded on a
24 sentence of imprisonment imposed for conviction of: (i) one
25 of the offenses enumerated in subdivision (a)(2)(i), (ii),
26 or (iii) when the offense is committed on or after June 19,

1 1998 or subdivision (a)(2)(iv) when the offense is
2 committed on or after June 23, 2005 (the effective date of
3 Public Act 94-71), (ii) reckless homicide as defined in
4 subsection (e) of Section 9-3 of the Criminal Code of 1961
5 when the offense is committed on or after January 1, 1999,
6 or aggravated driving under the influence of alcohol, other
7 drug or drugs, or intoxicating compound or compounds, or
8 any combination thereof as defined in subparagraph (F) of
9 paragraph (1) of subsection (d) of Section 11-501 of the
10 Illinois Vehicle Code, (iii) one of the offenses enumerated
11 in subdivision (a)(2.4) when the offense is committed on or
12 after July 15, 1999 (the effective date of Public Act
13 91-121), or (iv) aggravated arson when the offense is
14 committed on or after July 27, 2001 (the effective date of
15 Public Act 92-176).

16 (4) The rules and regulations shall also provide that
17 the good conduct credit accumulated and retained under
18 paragraph (2.1) of subsection (a) of this Section by any
19 inmate during specific periods of time in which such inmate
20 is engaged full-time in substance abuse programs,
21 correctional industry assignments, or educational programs
22 provided by the Department under this paragraph (4) and
23 satisfactorily completes the assigned program as
24 determined by the standards of the Department, shall be
25 multiplied by a factor of 1.25 for program participation
26 before August 11, 1993 and 1.50 for program participation

1 on or after that date. However, no inmate shall be eligible
2 for the additional good conduct credit under this paragraph
3 (4) or (4.1) of this subsection (a) while assigned to a
4 boot camp or electronic detention, or if convicted of an
5 offense enumerated in subdivision (a)(2)(i), (ii), or
6 (iii) of this Section that is committed on or after June
7 19, 1998 or subdivision (a)(2)(iv) of this Section that is
8 committed on or after June 23, 2005 (the effective date of
9 Public Act 94-71), or if convicted of reckless homicide as
10 defined in subsection (e) of Section 9-3 of the Criminal
11 Code of 1961 if the offense is committed on or after
12 January 1, 1999, or aggravated driving under the influence
13 of alcohol, other drug or drugs, or intoxicating compound
14 or compounds, or any combination thereof as defined in
15 subparagraph (F) of paragraph (1) of subsection (d) of
16 Section 11-501 of the Illinois Vehicle Code, or if
17 convicted of an offense enumerated in paragraph (a)(2.4) of
18 this Section that is committed on or after July 15, 1999
19 (the effective date of Public Act 91-121), or first degree
20 murder, a Class X felony, criminal sexual assault, felony
21 criminal sexual abuse, aggravated criminal sexual abuse,
22 aggravated battery with a firearm, or any predecessor or
23 successor offenses with the same or substantially the same
24 elements, or any inchoate offenses relating to the
25 foregoing offenses. No inmate shall be eligible for the
26 additional good conduct credit under this paragraph (4) who

1 (i) has previously received increased good conduct credit
2 under this paragraph (4) and has subsequently been
3 convicted of a felony, or (ii) has previously served more
4 than one prior sentence of imprisonment for a felony in an
5 adult correctional facility.

6 Educational, vocational, substance abuse and
7 correctional industry programs under which good conduct
8 credit may be increased under this paragraph (4) and
9 paragraph (4.1) of this subsection (a) shall be evaluated
10 by the Department on the basis of documented standards. The
11 Department shall report the results of these evaluations to
12 the Governor and the General Assembly by September 30th of
13 each year. The reports shall include data relating to the
14 recidivism rate among program participants.

15 Availability of these programs shall be subject to the
16 limits of fiscal resources appropriated by the General
17 Assembly for these purposes. Eligible inmates who are
18 denied immediate admission shall be placed on a waiting
19 list under criteria established by the Department. The
20 inability of any inmate to become engaged in any such
21 programs by reason of insufficient program resources or for
22 any other reason established under the rules and
23 regulations of the Department shall not be deemed a cause
24 of action under which the Department or any employee or
25 agent of the Department shall be liable for damages to the
26 inmate.

1 (4.1) The rules and regulations shall also provide that
2 an additional 60 days of good conduct credit shall be
3 awarded to any prisoner who passes the high school level
4 Test of General Educational Development (GED) while the
5 prisoner is incarcerated. The good conduct credit awarded
6 under this paragraph (4.1) shall be in addition to, and
7 shall not affect, the award of good conduct under any other
8 paragraph of this Section, but shall also be pursuant to
9 the guidelines and restrictions set forth in paragraph (4)
10 of subsection (a) of this Section. The good conduct credit
11 provided for in this paragraph shall be available only to
12 those prisoners who have not previously earned a high
13 school diploma or a GED. If, after an award of the GED good
14 conduct credit has been made and the Department determines
15 that the prisoner was not eligible, then the award shall be
16 revoked.

17 (4.5) The rules and regulations on early release shall
18 also provide that when the court's sentencing order
19 recommends a prisoner for substance abuse treatment and the
20 crime was committed on or after September 1, 2003 (the
21 effective date of Public Act 93-354), the prisoner shall
22 receive no good conduct credit awarded under clause (3) of
23 this subsection (a) unless he or she participates in and
24 completes a substance abuse treatment program. The
25 Director may waive the requirement to participate in or
26 complete a substance abuse treatment program and award the

1 good conduct credit in specific instances if the prisoner
2 is not a good candidate for a substance abuse treatment
3 program for medical, programming, or operational reasons.
4 Availability of substance abuse treatment shall be subject
5 to the limits of fiscal resources appropriated by the
6 General Assembly for these purposes. If treatment is not
7 available and the requirement to participate and complete
8 the treatment has not been waived by the Director, the
9 prisoner shall be placed on a waiting list under criteria
10 established by the Department. The Director may allow a
11 prisoner placed on a waiting list to participate in and
12 complete a substance abuse education class or attend
13 substance abuse self-help meetings in lieu of a substance
14 abuse treatment program. A prisoner on a waiting list who
15 is not placed in a substance abuse program prior to release
16 may be eligible for a waiver and receive good conduct
17 credit under clause (3) of this subsection (a) at the
18 discretion of the Director.

19 (5) Whenever the Department is to release any inmate
20 earlier than it otherwise would because of a grant of good
21 conduct credit for meritorious service given at any time
22 during the term, the Department shall give reasonable
23 advance notice of the impending release to the State's
24 Attorney of the county where the prosecution of the inmate
25 took place.

26 (b) Whenever a person is or has been committed under

1 several convictions, with separate sentences, the sentences
2 shall be construed under Section 5-8-4 in granting and
3 forfeiting of good time.

4 (c) The Department shall prescribe rules and regulations
5 for revoking good conduct credit, or suspending or reducing the
6 rate of accumulation of good conduct credit for specific rule
7 violations, during imprisonment. These rules and regulations
8 shall provide that no inmate may be penalized more than one
9 year of good conduct credit for any one infraction.

10 When the Department seeks to revoke, suspend or reduce the
11 rate of accumulation of any good conduct credits for an alleged
12 infraction of its rules, it shall bring charges therefor
13 against the prisoner sought to be so deprived of good conduct
14 credits before the Prisoner Review Board as provided in
15 subparagraph (a)(4) of Section 3-3-2 of this Code, if the
16 amount of credit at issue exceeds 30 days or when during any 12
17 month period, the cumulative amount of credit revoked exceeds
18 30 days except where the infraction is committed or discovered
19 within 60 days of scheduled release. In those cases, the
20 Department of Corrections may revoke up to 30 days of good
21 conduct credit. The Board may subsequently approve the
22 revocation of additional good conduct credit, if the Department
23 seeks to revoke good conduct credit in excess of 30 days.
24 However, the Board shall not be empowered to review the
25 Department's decision with respect to the loss of 30 days of
26 good conduct credit within any calendar year for any prisoner

1 or to increase any penalty beyond the length requested by the
2 Department.

3 The Director of the Department of Corrections, in
4 appropriate cases, may restore up to 30 days good conduct
5 credits which have been revoked, suspended or reduced. Any
6 restoration of good conduct credits in excess of 30 days shall
7 be subject to review by the Prisoner Review Board. However, the
8 Board may not restore good conduct credit in excess of the
9 amount requested by the Director.

10 Nothing contained in this Section shall prohibit the
11 Prisoner Review Board from ordering, pursuant to Section
12 3-3-9(a)(3)(i)(B), that a prisoner serve up to one year of the
13 sentence imposed by the court that was not served due to the
14 accumulation of good conduct credit.

15 (d) If a lawsuit is filed by a prisoner in an Illinois or
16 federal court against the State, the Department of Corrections,
17 or the Prisoner Review Board, or against any of their officers
18 or employees, and the court makes a specific finding that a
19 pleading, motion, or other paper filed by the prisoner is
20 frivolous, the Department of Corrections shall conduct a
21 hearing to revoke up to 180 days of good conduct credit by
22 bringing charges against the prisoner sought to be deprived of
23 the good conduct credits before the Prisoner Review Board as
24 provided in subparagraph (a)(8) of Section 3-3-2 of this Code.
25 If the prisoner has not accumulated 180 days of good conduct
26 credit at the time of the finding, then the Prisoner Review

1 Board may revoke all good conduct credit accumulated by the
2 prisoner.

3 For purposes of this subsection (d):

4 (1) "Frivolous" means that a pleading, motion, or other
5 filing which purports to be a legal document filed by a
6 prisoner in his or her lawsuit meets any or all of the
7 following criteria:

8 (A) it lacks an arguable basis either in law or in
9 fact;

10 (B) it is being presented for any improper purpose,
11 such as to harass or to cause unnecessary delay or
12 needless increase in the cost of litigation;

13 (C) the claims, defenses, and other legal
14 contentions therein are not warranted by existing law
15 or by a nonfrivolous argument for the extension,
16 modification, or reversal of existing law or the
17 establishment of new law;

18 (D) the allegations and other factual contentions
19 do not have evidentiary support or, if specifically so
20 identified, are not likely to have evidentiary support
21 after a reasonable opportunity for further
22 investigation or discovery; or

23 (E) the denials of factual contentions are not
24 warranted on the evidence, or if specifically so
25 identified, are not reasonably based on a lack of
26 information or belief.

1 (2) "Lawsuit" means a petition for post-conviction
2 relief under Article 122 of the Code of Criminal Procedure
3 of 1963, a motion pursuant to Section 116-3 of the Code of
4 Criminal Procedure of 1963, a habeas corpus action under
5 Article X of the Code of Civil Procedure or under federal
6 law (28 U.S.C. 2254), a petition for claim under the Court
7 of Claims Act or an action under the federal Civil Rights
8 Act (42 U.S.C. 1983).

9 (e) Nothing in Public Act 90-592 or 90-593 affects the
10 validity of Public Act 89-404.

11 (Source: P.A. 93-213, eff. 7-18-03; 93-354, eff. 9-1-03; 94-71,
12 eff. 6-23-05; 94-128, eff. 7-7-05; 94-156, eff. 7-8-05; 94-398,
13 eff. 8-2-05; 94-491, eff. 8-8-05; 94-744, eff. 5-8-06.)

14 (730 ILCS 5/3-8-10) (from Ch. 38, par. 1003-8-10)

15 Sec. 3-8-10. Intrastate Detainers. ~~Except for persons~~
16 ~~sentenced to death,~~ Subsection (b), (c) and (e) of Section
17 103-5 of the Code of Criminal Procedure of 1963 shall also
18 apply to persons committed to any institution or facility or
19 program of the Illinois Department of Corrections who have
20 untried complaints, charges or indictments pending in any
21 county of this State, and such person shall include in the
22 demand under subsection (b), a statement of the place of
23 present commitment, the term, and length of the remaining term,
24 the charges pending against him or her to be tried and the
25 county of the charges, and the demand shall be addressed to the

1 state's attorney of the county where he or she is charged with
2 a copy to the clerk of that court and a copy to the chief
3 administrative officer of the Department of Corrections
4 institution or facility to which he or she is committed. The
5 state's attorney shall then procure the presence of the
6 defendant for trial in his county by habeas corpus. Additional
7 time may be granted by the court for the process of bringing
8 and serving an order of habeas corpus ad prosequendum. In the
9 event that the person is not brought to trial within the
10 allotted time, then the charge for which he or she has
11 requested a speedy trial shall be dismissed.

12 (Source: P.A. 83-346.)

13 (730 ILCS 5/5-1-9) (from Ch. 38, par. 1005-1-9)

14 Sec. 5-1-9. Felony.

15 "Felony" means an offense for which a sentence to ~~death or~~
16 ~~to~~ a term of imprisonment in a penitentiary for one year or
17 more is provided.

18 (Source: P.A. 77-2097.)

19 (730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

20 Sec. 5-4-1. Sentencing Hearing.

21 (a) After ~~Except when the death penalty is sought under~~
22 ~~hearing procedures otherwise specified, after~~ a determination
23 of guilt, a hearing shall be held to impose the sentence.
24 However, prior to the imposition of sentence on an individual

1 being sentenced for an offense based upon a charge for a
2 violation of Section 11-501 of the Illinois Vehicle Code or a
3 similar provision of a local ordinance, the individual must
4 undergo a professional evaluation to determine if an alcohol or
5 other drug abuse problem exists and the extent of such a
6 problem. Programs conducting these evaluations shall be
7 licensed by the Department of Human Services. However, if the
8 individual is not a resident of Illinois, the court may, in its
9 discretion, accept an evaluation from a program in the state of
10 such individual's residence. The court may in its sentencing
11 order approve an eligible defendant for placement in a
12 Department of Corrections impact incarceration program as
13 provided in Section 5-8-1.1 or 5-8-1.3. The court may in its
14 sentencing order recommend a defendant for placement in a
15 Department of Corrections substance abuse treatment program as
16 provided in paragraph (a) of subsection (1) of Section 3-2-2
17 conditioned upon the defendant being accepted in a program by
18 the Department of Corrections. At the hearing the court shall:

19 (1) consider the evidence, if any, received upon the
20 trial;

21 (2) consider any presentence reports;

22 (3) consider the financial impact of incarceration
23 based on the financial impact statement filed with the
24 clerk of the court by the Department of Corrections;

25 (4) consider evidence and information offered by the
26 parties in aggravation and mitigation;

1 (4.5) consider substance abuse treatment, eligibility
2 screening, and an assessment, if any, of the defendant by
3 an agent designated by the State of Illinois to provide
4 assessment services for the Illinois courts;

5 (5) hear arguments as to sentencing alternatives;

6 (6) afford the defendant the opportunity to make a
7 statement in his own behalf;

8 (7) afford the victim of a violent crime or a violation
9 of Section 11-501 of the Illinois Vehicle Code, or a
10 similar provision of a local ordinance, or a qualified
11 individual affected by: (i) a violation of Section 405,
12 405.1, 405.2, or 407 of the Illinois Controlled Substances
13 Act or a violation of Section 55 or Section 65 of the
14 Methamphetamine Control and Community Protection Act, or
15 (ii) a Class 4 felony violation of Section 11-14, 11-15,
16 11-17, 11-18, 11-18.1, or 11-19 of the Criminal Code of
17 1961, committed by the defendant the opportunity to make a
18 statement concerning the impact on the victim and to offer
19 evidence in aggravation or mitigation; provided that the
20 statement and evidence offered in aggravation or
21 mitigation must first be prepared in writing in conjunction
22 with the State's Attorney before it may be presented orally
23 at the hearing. Any sworn testimony offered by the victim
24 is subject to the defendant's right to cross-examine. All
25 statements and evidence offered under this paragraph (7)
26 shall become part of the record of the court. For the

1 purpose of this paragraph (7), "qualified individual"
2 means any person who (i) lived or worked within the
3 territorial jurisdiction where the offense took place when
4 the offense took place; and (ii) is familiar with various
5 public places within the territorial jurisdiction where
6 the offense took place when the offense took place. For the
7 purposes of this paragraph (7), "qualified individual"
8 includes any peace officer, or any member of any duly
9 organized State, county, or municipal peace unit assigned
10 to the territorial jurisdiction where the offense took
11 place when the offense took place;

12 (8) in cases of reckless homicide afford the victim's
13 spouse, guardians, parents or other immediate family
14 members an opportunity to make oral statements; and

15 (9) in cases involving a felony sex offense as defined
16 under the Sex Offender Management Board Act, consider the
17 results of the sex offender evaluation conducted pursuant
18 to Section 5-3-2 of this Act.

19 (b) All sentences shall be imposed by the judge based upon
20 his independent assessment of the elements specified above and
21 any agreement as to sentence reached by the parties. The judge
22 who presided at the trial or the judge who accepted the plea of
23 guilty shall impose the sentence unless he is no longer sitting
24 as a judge in that court. Where the judge does not impose
25 sentence at the same time on all defendants who are convicted
26 as a result of being involved in the same offense, the

1 defendant or the State's Attorney may advise the sentencing
2 court of the disposition of any other defendants who have been
3 sentenced.

4 (c) In imposing a sentence for a violent crime or for an
5 offense of operating or being in physical control of a vehicle
6 while under the influence of alcohol, any other drug or any
7 combination thereof, or a similar provision of a local
8 ordinance, when such offense resulted in the personal injury to
9 someone other than the defendant, the trial judge shall specify
10 on the record the particular evidence, information, factors in
11 mitigation and aggravation or other reasons that led to his
12 sentencing determination. The full verbatim record of the
13 sentencing hearing shall be filed with the clerk of the court
14 and shall be a public record.

15 (c-1) In imposing a sentence for the offense of aggravated
16 kidnapping for ransom, home invasion, armed robbery,
17 aggravated vehicular hijacking, aggravated discharge of a
18 firearm, or armed violence with a category I weapon or category
19 II weapon, the trial judge shall make a finding as to whether
20 the conduct leading to conviction for the offense resulted in
21 great bodily harm to a victim, and shall enter that finding and
22 the basis for that finding in the record.

23 (c-2) If the defendant is sentenced to prison, other than
24 when a sentence of natural life imprisonment ~~or a sentence of~~
25 ~~death~~ is imposed, at the time the sentence is imposed the judge
26 shall state on the record in open court the approximate period

1 of time the defendant will serve in custody according to the
2 then current statutory rules and regulations for early release
3 found in Section 3-6-3 and other related provisions of this
4 Code. This statement is intended solely to inform the public,
5 has no legal effect on the defendant's actual release, and may
6 not be relied on by the defendant on appeal.

7 The judge's statement, to be given after pronouncing the
8 sentence, other than when the sentence is imposed for one of
9 the offenses enumerated in paragraph (a)(3) of Section 3-6-3,
10 shall include the following:

11 "The purpose of this statement is to inform the public of
12 the actual period of time this defendant is likely to spend in
13 prison as a result of this sentence. The actual period of
14 prison time served is determined by the statutes of Illinois as
15 applied to this sentence by the Illinois Department of
16 Corrections and the Illinois Prisoner Review Board. In this
17 case, assuming the defendant receives all of his or her good
18 conduct credit, the period of estimated actual custody is ...
19 years and ... months, less up to 180 days additional good
20 conduct credit for meritorious service. If the defendant,
21 because of his or her own misconduct or failure to comply with
22 the institutional regulations, does not receive those credits,
23 the actual time served in prison will be longer. The defendant
24 may also receive an additional one-half day good conduct credit
25 for each day of participation in vocational, industry,
26 substance abuse, and educational programs as provided for by

1 Illinois statute."

2 When the sentence is imposed for one of the offenses
3 enumerated in paragraph (a)(3) of Section 3-6-3, other than
4 when the sentence is imposed for one of the offenses enumerated
5 in paragraph (a)(2) of Section 3-6-3 committed on or after June
6 19, 1998, and other than when the sentence is imposed for
7 reckless homicide as defined in subsection (e) of Section 9-3
8 of the Criminal Code of 1961 if the offense was committed on or
9 after January 1, 1999, and other than when the sentence is
10 imposed for aggravated arson if the offense was committed on or
11 after July 27, 2001 (the effective date of Public Act 92-176),
12 the judge's statement, to be given after pronouncing the
13 sentence, shall include the following:

14 "The purpose of this statement is to inform the public of
15 the actual period of time this defendant is likely to spend in
16 prison as a result of this sentence. The actual period of
17 prison time served is determined by the statutes of Illinois as
18 applied to this sentence by the Illinois Department of
19 Corrections and the Illinois Prisoner Review Board. In this
20 case, assuming the defendant receives all of his or her good
21 conduct credit, the period of estimated actual custody is ...
22 years and ... months, less up to 90 days additional good
23 conduct credit for meritorious service. If the defendant,
24 because of his or her own misconduct or failure to comply with
25 the institutional regulations, does not receive those credits,
26 the actual time served in prison will be longer. The defendant

1 may also receive an additional one-half day good conduct credit
2 for each day of participation in vocational, industry,
3 substance abuse, and educational programs as provided for by
4 Illinois statute."

5 When the sentence is imposed for one of the offenses
6 enumerated in paragraph (a)(2) of Section 3-6-3, other than
7 first degree murder, and the offense was committed on or after
8 June 19, 1998, and when the sentence is imposed for reckless
9 homicide as defined in subsection (e) of Section 9-3 of the
10 Criminal Code of 1961 if the offense was committed on or after
11 January 1, 1999, and when the sentence is imposed for
12 aggravated driving under the influence of alcohol, other drug
13 or drugs, or intoxicating compound or compounds, or any
14 combination thereof as defined in subparagraph (F) of paragraph
15 (1) of subsection (d) of Section 11-501 of the Illinois Vehicle
16 Code, and when the sentence is imposed for aggravated arson if
17 the offense was committed on or after July 27, 2001 (the
18 effective date of Public Act 92-176), the judge's statement, to
19 be given after pronouncing the sentence, shall include the
20 following:

21 "The purpose of this statement is to inform the public of
22 the actual period of time this defendant is likely to spend in
23 prison as a result of this sentence. The actual period of
24 prison time served is determined by the statutes of Illinois as
25 applied to this sentence by the Illinois Department of
26 Corrections and the Illinois Prisoner Review Board. In this

1 case, the defendant is entitled to no more than 4 1/2 days of
2 good conduct credit for each month of his or her sentence of
3 imprisonment. Therefore, this defendant will serve at least 85%
4 of his or her sentence. Assuming the defendant receives 4 1/2
5 days credit for each month of his or her sentence, the period
6 of estimated actual custody is ... years and ... months. If the
7 defendant, because of his or her own misconduct or failure to
8 comply with the institutional regulations receives lesser
9 credit, the actual time served in prison will be longer."

10 When a sentence of imprisonment is imposed for first degree
11 murder and the offense was committed on or after June 19, 1998,
12 the judge's statement, to be given after pronouncing the
13 sentence, shall include the following:

14 "The purpose of this statement is to inform the public of
15 the actual period of time this defendant is likely to spend in
16 prison as a result of this sentence. The actual period of
17 prison time served is determined by the statutes of Illinois as
18 applied to this sentence by the Illinois Department of
19 Corrections and the Illinois Prisoner Review Board. In this
20 case, the defendant is not entitled to good conduct credit.
21 Therefore, this defendant will serve 100% of his or her
22 sentence."

23 When the sentencing order recommends placement in a
24 substance abuse program for any offense that results in
25 incarceration in a Department of Corrections facility and the
26 crime was committed on or after September 1, 2003 (the

1 effective date of Public Act 93-354), the judge's statement, in
2 addition to any other judge's statement required under this
3 Section, to be given after pronouncing the sentence, shall
4 include the following:

5 "The purpose of this statement is to inform the public of
6 the actual period of time this defendant is likely to spend in
7 prison as a result of this sentence. The actual period of
8 prison time served is determined by the statutes of Illinois as
9 applied to this sentence by the Illinois Department of
10 Corrections and the Illinois Prisoner Review Board. In this
11 case, the defendant shall receive no good conduct credit under
12 clause (3) of subsection (a) of Section 3-6-3 until he or she
13 participates in and completes a substance abuse treatment
14 program or receives a waiver from the Director of Corrections
15 pursuant to clause (4.5) of subsection (a) of Section 3-6-3."

16 (d) When the defendant is committed to the Department of
17 Corrections, the State's Attorney shall and counsel for the
18 defendant may file a statement with the clerk of the court to
19 be transmitted to the department, agency or institution to
20 which the defendant is committed to furnish such department,
21 agency or institution with the facts and circumstances of the
22 offense for which the person was committed together with all
23 other factual information accessible to them in regard to the
24 person prior to his commitment relative to his habits,
25 associates, disposition and reputation and any other facts and
26 circumstances which may aid such department, agency or

1 institution during its custody of such person. The clerk shall
2 within 10 days after receiving any such statements transmit a
3 copy to such department, agency or institution and a copy to
4 the other party, provided, however, that this shall not be
5 cause for delay in conveying the person to the department,
6 agency or institution to which he has been committed.

7 (e) The clerk of the court shall transmit to the
8 department, agency or institution, if any, to which the
9 defendant is committed, the following:

10 (1) the sentence imposed;

11 (2) any statement by the court of the basis for
12 imposing the sentence;

13 (3) any presentence reports;

14 (3.5) any sex offender evaluations;

15 (3.6) any substance abuse treatment eligibility
16 screening and assessment of the defendant by an agent
17 designated by the State of Illinois to provide assessment
18 services for the Illinois courts;

19 (4) the number of days, if any, which the defendant has
20 been in custody and for which he is entitled to credit
21 against the sentence, which information shall be provided
22 to the clerk by the sheriff;

23 (4.1) any finding of great bodily harm made by the
24 court with respect to an offense enumerated in subsection
25 (c-1);

26 (5) all statements filed under subsection (d) of this

1 Section;

2 (6) any medical or mental health records or summaries
3 of the defendant;

4 (7) the municipality where the arrest of the offender
5 or the commission of the offense has occurred, where such
6 municipality has a population of more than 25,000 persons;

7 (8) all statements made and evidence offered under
8 paragraph (7) of subsection (a) of this Section; and

9 (9) all additional matters which the court directs the
10 clerk to transmit.

11 (Source: P.A. 93-213, eff. 7-18-03; 93-317, eff. 1-1-04;
12 93-354, eff. 9-1-03; 93-616, eff. 1-1-04; 94-156, eff. 7-8-05;
13 94-556, eff. 9-11-05; revised 8-19-05.)

14 (730 ILCS 5/5-4-3) (from Ch. 38, par. 1005-4-3)

15 Sec. 5-4-3. Persons convicted of, or found delinquent for,
16 certain offenses or institutionalized as sexually dangerous;
17 specimens; genetic marker groups.

18 (a) Any person convicted of, found guilty under the
19 Juvenile Court Act of 1987 for, or who received a disposition
20 of court supervision for, a qualifying offense or attempt of a
21 qualifying offense, convicted or found guilty of any offense
22 classified as a felony under Illinois law, convicted or found
23 guilty of any offense requiring registration under the Sex
24 Offender Registration Act, found guilty or given supervision
25 for any offense classified as a felony under the Juvenile Court

1 Act of 1987, convicted or found guilty of, under the Juvenile
2 Court Act of 1987, any offense requiring registration under the
3 Sex Offender Registration Act, or institutionalized as a
4 sexually dangerous person under the Sexually Dangerous Persons
5 Act, or committed as a sexually violent person under the
6 Sexually Violent Persons Commitment Act shall, regardless of
7 the sentence or disposition imposed, be required to submit
8 specimens of blood, saliva, or tissue to the Illinois
9 Department of State Police in accordance with the provisions of
10 this Section, provided such person is:

11 (1) convicted of a qualifying offense or attempt of a
12 qualifying offense on or after July 1, 1990 and sentenced
13 to a term of imprisonment, periodic imprisonment, fine,
14 probation, conditional discharge or any other form of
15 sentence, or given a disposition of court supervision for
16 the offense;

17 (1.5) found guilty or given supervision under the
18 Juvenile Court Act of 1987 for a qualifying offense or
19 attempt of a qualifying offense on or after January 1,
20 1997;

21 (2) ordered institutionalized as a sexually dangerous
22 person on or after July 1, 1990;

23 (3) convicted of a qualifying offense or attempt of a
24 qualifying offense before July 1, 1990 and is presently
25 confined as a result of such conviction in any State
26 correctional facility or county jail or is presently

1 serving a sentence of probation, conditional discharge or
2 periodic imprisonment as a result of such conviction;

3 (3.5) convicted or found guilty of any offense
4 classified as a felony under Illinois law or found guilty
5 or given supervision for such an offense under the Juvenile
6 Court Act of 1987 on or after August 22, 2002;

7 (4) presently institutionalized as a sexually
8 dangerous person or presently institutionalized as a
9 person found guilty but mentally ill of a sexual offense or
10 attempt to commit a sexual offense;

11 (4.5) ordered committed as a sexually violent person on
12 or after the effective date of the Sexually Violent Persons
13 Commitment Act; or

14 (5) seeking transfer to or residency in Illinois under
15 Sections 3-3-11.05 through 3-3-11.5 of the Unified Code of
16 Corrections and the Interstate Compact for Adult Offender
17 Supervision or the Interstate Agreements on Sexually
18 Dangerous Persons Act.

19 Notwithstanding other provisions of this Section, any
20 person incarcerated in a facility of the Illinois Department of
21 Corrections on or after August 22, 2002 shall be required to
22 submit a specimen of blood, saliva, or tissue prior to his or
23 her final discharge or release on parole or mandatory
24 supervised release, as a condition of his or her parole or
25 mandatory supervised release.

26 Notwithstanding other provisions of this Section, any

1 person sentenced to life imprisonment in a facility of the
2 Illinois Department of Corrections after the effective date of
3 this amendatory Act of the 94th General Assembly or sentenced
4 to death after the effective date of this amendatory Act of the
5 94th General Assembly and before the effective date of this
6 amendatory Act of the 95th General Assembly shall be required
7 to provide a specimen of blood, saliva, or tissue within 45
8 days after sentencing or disposition at a collection site
9 designated by the Illinois Department of State Police. Any
10 person serving a sentence of life imprisonment in a facility of
11 the Illinois Department of Corrections on the effective date of
12 this amendatory Act of the 94th General Assembly or any person
13 who is under a sentence of death on the effective date of this
14 amendatory Act of the 94th General Assembly and before the
15 effective date of this amendatory Act of the 95th General
16 Assembly shall be required to provide a specimen of blood,
17 saliva, or tissue upon request at a collection site designated
18 by the Illinois Department of State Police.

19 (a-5) Any person who was otherwise convicted of or received
20 a disposition of court supervision for any other offense under
21 the Criminal Code of 1961 or who was found guilty or given
22 supervision for such a violation under the Juvenile Court Act
23 of 1987, may, regardless of the sentence imposed, be required
24 by an order of the court to submit specimens of blood, saliva,
25 or tissue to the Illinois Department of State Police in
26 accordance with the provisions of this Section.

1 (b) Any person required by paragraphs (a)(1), (a)(1.5),
2 (a)(2), (a)(3.5), and (a-5) to provide specimens of blood,
3 saliva, or tissue shall provide specimens of blood, saliva, or
4 tissue within 45 days after sentencing or disposition at a
5 collection site designated by the Illinois Department of State
6 Police.

7 (c) Any person required by paragraphs (a)(3), (a)(4), and
8 (a)(4.5) to provide specimens of blood, saliva, or tissue shall
9 be required to provide such samples prior to final discharge,
10 parole, or release at a collection site designated by the
11 Illinois Department of State Police.

12 (c-5) Any person required by paragraph (a)(5) to provide
13 specimens of blood, saliva, or tissue shall, where feasible, be
14 required to provide the specimens before being accepted for
15 conditioned residency in Illinois under the interstate compact
16 or agreement, but no later than 45 days after arrival in this
17 State.

18 (c-6) The Illinois Department of State Police may determine
19 which type of specimen or specimens, blood, saliva, or tissue,
20 is acceptable for submission to the Division of Forensic
21 Services for analysis.

22 (d) The Illinois Department of State Police shall provide
23 all equipment and instructions necessary for the collection of
24 blood samples. The collection of samples shall be performed in
25 a medically approved manner. Only a physician authorized to
26 practice medicine, a registered nurse or other qualified person

1 trained in venipuncture may withdraw blood for the purposes of
2 this Act. The samples shall thereafter be forwarded to the
3 Illinois Department of State Police, Division of Forensic
4 Services, for analysis and categorizing into genetic marker
5 groupings.

6 (d-1) The Illinois Department of State Police shall provide
7 all equipment and instructions necessary for the collection of
8 saliva samples. The collection of saliva samples shall be
9 performed in a medically approved manner. Only a person trained
10 in the instructions promulgated by the Illinois State Police on
11 collecting saliva may collect saliva for the purposes of this
12 Section. The samples shall thereafter be forwarded to the
13 Illinois Department of State Police, Division of Forensic
14 Services, for analysis and categorizing into genetic marker
15 groupings.

16 (d-2) The Illinois Department of State Police shall provide
17 all equipment and instructions necessary for the collection of
18 tissue samples. The collection of tissue samples shall be
19 performed in a medically approved manner. Only a person trained
20 in the instructions promulgated by the Illinois State Police on
21 collecting tissue may collect tissue for the purposes of this
22 Section. The samples shall thereafter be forwarded to the
23 Illinois Department of State Police, Division of Forensic
24 Services, for analysis and categorizing into genetic marker
25 groupings.

26 (d-5) To the extent that funds are available, the Illinois

1 Department of State Police shall contract with qualified
2 personnel and certified laboratories for the collection,
3 analysis, and categorization of known samples.

4 (d-6) Agencies designated by the Illinois Department of
5 State Police and the Illinois Department of State Police may
6 contract with third parties to provide for the collection or
7 analysis of DNA, or both, of an offender's blood, saliva, and
8 tissue samples.

9 (e) The genetic marker groupings shall be maintained by the
10 Illinois Department of State Police, Division of Forensic
11 Services.

12 (f) The genetic marker grouping analysis information
13 obtained pursuant to this Act shall be confidential and shall
14 be released only to peace officers of the United States, of
15 other states or territories, of the insular possessions of the
16 United States, of foreign countries duly authorized to receive
17 the same, to all peace officers of the State of Illinois and to
18 all prosecutorial agencies, and to defense counsel as provided
19 by Section 116-5 of the Code of Criminal Procedure of 1963. The
20 genetic marker grouping analysis information obtained pursuant
21 to this Act shall be used only for (i) valid law enforcement
22 identification purposes and as required by the Federal Bureau
23 of Investigation for participation in the National DNA
24 database, (ii) technology validation purposes, (iii) a
25 population statistics database, (iv) quality assurance
26 purposes if personally identifying information is removed, (v)

1 assisting in the defense of the criminally accused pursuant to
2 Section 116-5 of the Code of Criminal Procedure of 1963, or
3 (vi) identifying and assisting in the prosecution of a person
4 who is suspected of committing a sexual assault as defined in
5 Section 1a of the Sexual Assault Survivors Emergency Treatment
6 Act. Notwithstanding any other statutory provision to the
7 contrary, all information obtained under this Section shall be
8 maintained in a single State data base, which may be uploaded
9 into a national database, and which information may be subject
10 to expungement only as set forth in subsection (f-1).

11 (f-1) Upon receipt of notification of a reversal of a
12 conviction based on actual innocence, or of the granting of a
13 pardon pursuant to Section 12 of Article V of the Illinois
14 Constitution, if that pardon document specifically states that
15 the reason for the pardon is the actual innocence of an
16 individual whose DNA record has been stored in the State or
17 national DNA identification index in accordance with this
18 Section by the Illinois Department of State Police, the DNA
19 record shall be expunged from the DNA identification index, and
20 the Department shall by rule prescribe procedures to ensure
21 that the record and any samples, analyses, or other documents
22 relating to such record, whether in the possession of the
23 Department or any law enforcement or police agency, or any
24 forensic DNA laboratory, including any duplicates or copies
25 thereof, are destroyed and a letter is sent to the court
26 verifying the expungement is completed.

1 (f-5) Any person who intentionally uses genetic marker
2 grouping analysis information, or any other information
3 derived from a DNA sample, beyond the authorized uses as
4 provided under this Section, or any other Illinois law, is
5 guilty of a Class 4 felony, and shall be subject to a fine of
6 not less than \$5,000.

7 (f-6) The Illinois Department of State Police may contract
8 with third parties for the purposes of implementing this
9 amendatory Act of the 93rd General Assembly. Any other party
10 contracting to carry out the functions of this Section shall be
11 subject to the same restrictions and requirements of this
12 Section insofar as applicable, as the Illinois Department of
13 State Police, and to any additional restrictions imposed by the
14 Illinois Department of State Police.

15 (g) For the purposes of this Section, "qualifying offense"
16 means any of the following:

17 (1) any violation or inchoate violation of Section
18 11-6, 11-9.1, 11-11, 11-18.1, 12-15, or 12-16 of the
19 Criminal Code of 1961;

20 (1.1) any violation or inchoate violation of Section
21 9-1, 9-2, 10-1, 10-2, 12-11, 12-11.1, 18-1, 18-2, 18-3,
22 18-4, 19-1, or 19-2 of the Criminal Code of 1961 for which
23 persons are convicted on or after July 1, 2001;

24 (2) any former statute of this State which defined a
25 felony sexual offense;

26 (3) (blank);

1 (4) any inchoate violation of Section 9-3.1, 11-9.3,
2 12-7.3, or 12-7.4 of the Criminal Code of 1961; or

3 (5) any violation or inchoate violation of Article 29D
4 of the Criminal Code of 1961.

5 (g-5) (Blank).

6 (h) The Illinois Department of State Police shall be the
7 State central repository for all genetic marker grouping
8 analysis information obtained pursuant to this Act. The
9 Illinois Department of State Police may promulgate rules for
10 the form and manner of the collection of blood, saliva, or
11 tissue samples and other procedures for the operation of this
12 Act. The provisions of the Administrative Review Law shall
13 apply to all actions taken under the rules so promulgated.

14 (i) (1) A person required to provide a blood, saliva, or
15 tissue specimen shall cooperate with the collection of the
16 specimen and any deliberate act by that person intended to
17 impede, delay or stop the collection of the blood, saliva,
18 or tissue specimen is a Class A misdemeanor.

19 (2) In the event that a person's DNA sample is not
20 adequate for any reason, the person shall provide another
21 DNA sample for analysis. Duly authorized law enforcement
22 and corrections personnel may employ reasonable force in
23 cases in which an individual refuses to provide a DNA
24 sample required under this Act.

25 (j) Any person required by subsection (a) to submit
26 specimens of blood, saliva, or tissue to the Illinois

1 Department of State Police for analysis and categorization into
2 genetic marker grouping, in addition to any other disposition,
3 penalty, or fine imposed, shall pay an analysis fee of \$200. If
4 the analysis fee is not paid at the time of sentencing, the
5 court shall establish a fee schedule by which the entire amount
6 of the analysis fee shall be paid in full, such schedule not to
7 exceed 24 months from the time of conviction. The inability to
8 pay this analysis fee shall not be the sole ground to
9 incarcerate the person.

10 (k) All analysis and categorization fees provided for by
11 subsection (j) shall be regulated as follows:

12 (1) The State Offender DNA Identification System Fund
13 is hereby created as a special fund in the State Treasury.

14 (2) All fees shall be collected by the clerk of the
15 court and forwarded to the State Offender DNA
16 Identification System Fund for deposit. The clerk of the
17 circuit court may retain the amount of \$10 from each
18 collected analysis fee to offset administrative costs
19 incurred in carrying out the clerk's responsibilities
20 under this Section.

21 (3) Fees deposited into the State Offender DNA
22 Identification System Fund shall be used by Illinois State
23 Police crime laboratories as designated by the Director of
24 State Police. These funds shall be in addition to any
25 allocations made pursuant to existing laws and shall be
26 designated for the exclusive use of State crime

1 laboratories. These uses may include, but are not limited
2 to, the following:

3 (A) Costs incurred in providing analysis and
4 genetic marker categorization as required by
5 subsection (d).

6 (B) Costs incurred in maintaining genetic marker
7 groupings as required by subsection (e).

8 (C) Costs incurred in the purchase and maintenance
9 of equipment for use in performing analyses.

10 (D) Costs incurred in continuing research and
11 development of new techniques for analysis and genetic
12 marker categorization.

13 (E) Costs incurred in continuing education,
14 training, and professional development of forensic
15 scientists regularly employed by these laboratories.

16 (1) The failure of a person to provide a specimen, or of
17 any person or agency to collect a specimen, within the 45 day
18 period shall in no way alter the obligation of the person to
19 submit such specimen, or the authority of the Illinois
20 Department of State Police or persons designated by the
21 Department to collect the specimen, or the authority of the
22 Illinois Department of State Police to accept, analyze and
23 maintain the specimen or to maintain or upload results of
24 genetic marker grouping analysis information into a State or
25 national database.

26 (m) If any provision of this amendatory Act of the 93rd

1 General Assembly is held unconstitutional or otherwise
2 invalid, the remainder of this amendatory Act of the 93rd
3 General Assembly is not affected.

4 (Source: P.A. 93-216, eff. 1-1-04; 93-605, eff. 11-19-03;
5 93-781, eff. 1-1-05; 94-16, eff. 6-13-05; 94-1018, eff.
6 1-1-07.)

7 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

8 (Text of Section before amendment by P.A. 94-1035)

9 Sec. 5-5-3. Disposition.

10 (a) Except as provided in Section 11-501 of the Illinois
11 Vehicle Code, every person convicted of an offense shall be
12 sentenced as provided in this Section.

13 (b) The following options shall be appropriate
14 dispositions, alone or in combination, for all felonies and
15 misdemeanors other than those identified in subsection (c) of
16 this Section:

17 (1) A period of probation.

18 (2) A term of periodic imprisonment.

19 (3) A term of conditional discharge.

20 (4) A term of imprisonment.

21 (5) An order directing the offender to clean up and
22 repair the damage, if the offender was convicted under
23 paragraph (h) of Section 21-1 of the Criminal Code of 1961
24 (now repealed).

25 (6) A fine.

1 (7) An order directing the offender to make restitution
2 to the victim under Section 5-5-6 of this Code.

3 (8) A sentence of participation in a county impact
4 incarceration program under Section 5-8-1.2 of this Code.

5 (9) A term of imprisonment in combination with a term
6 of probation when the offender has been admitted into a
7 drug court program under Section 20 of the Drug Court
8 Treatment Act.

9 Neither a fine nor restitution shall be the sole
10 disposition for a felony and either or both may be imposed only
11 in conjunction with another disposition.

12 (c) (1) When a defendant is found guilty of first degree
13 murder the State may ~~either~~ seek a sentence of imprisonment
14 under Section 5-8-1 of this Code, ~~or where appropriate seek~~
15 ~~a sentence of death under Section 9-1 of the Criminal Code~~
16 ~~of 1961.~~

17 (2) A period of probation, a term of periodic
18 imprisonment or conditional discharge shall not be imposed
19 for the following offenses. The court shall sentence the
20 offender to not less than the minimum term of imprisonment
21 set forth in this Code for the following offenses, and may
22 order a fine or restitution or both in conjunction with
23 such term of imprisonment:

24 (A) First degree murder ~~where the death penalty is~~
25 ~~not imposed.~~

26 (B) Attempted first degree murder.

1 (C) A Class X felony.

2 (D) A violation of Section 401.1 or 407 of the
3 Illinois Controlled Substances Act, or a violation of
4 subdivision (c) (1) or (c) (2) of Section 401 of that Act
5 which relates to more than 5 grams of a substance
6 containing heroin or cocaine or an analog thereof.

7 (E) A violation of Section 5.1 or 9 of the Cannabis
8 Control Act.

9 (F) A Class 2 or greater felony if the offender had
10 been convicted of a Class 2 or greater felony within 10
11 years of the date on which the offender committed the
12 offense for which he or she is being sentenced, except
13 as otherwise provided in Section 40-10 of the
14 Alcoholism and Other Drug Abuse and Dependency Act.

15 (F-5) A violation of Section 24-1, 24-1.1, or
16 24-1.6 of the Criminal Code of 1961 for which
17 imprisonment is prescribed in those Sections.

18 (G) Residential burglary, except as otherwise
19 provided in Section 40-10 of the Alcoholism and Other
20 Drug Abuse and Dependency Act.

21 (H) Criminal sexual assault.

22 (I) Aggravated battery of a senior citizen.

23 (J) A forcible felony if the offense was related to
24 the activities of an organized gang.

25 Before July 1, 1994, for the purposes of this
26 paragraph, "organized gang" means an association of 5

1 or more persons, with an established hierarchy, that
2 encourages members of the association to perpetrate
3 crimes or provides support to the members of the
4 association who do commit crimes.

5 Beginning July 1, 1994, for the purposes of this
6 paragraph, "organized gang" has the meaning ascribed
7 to it in Section 10 of the Illinois Streetgang
8 Terrorism Omnibus Prevention Act.

9 (K) Vehicular hijacking.

10 (L) A second or subsequent conviction for the
11 offense of hate crime when the underlying offense upon
12 which the hate crime is based is felony aggravated
13 assault or felony mob action.

14 (M) A second or subsequent conviction for the
15 offense of institutional vandalism if the damage to the
16 property exceeds \$300.

17 (N) A Class 3 felony violation of paragraph (1) of
18 subsection (a) of Section 2 of the Firearm Owners
19 Identification Card Act.

20 (O) A violation of Section 12-6.1 of the Criminal
21 Code of 1961.

22 (P) A violation of paragraph (1), (2), (3), (4),
23 (5), or (7) of subsection (a) of Section 11-20.1 of the
24 Criminal Code of 1961.

25 (Q) A violation of Section 20-1.2 or 20-1.3 of the
26 Criminal Code of 1961.

1 (R) A violation of Section 24-3A of the Criminal
2 Code of 1961.

3 (S) (Blank).

4 (T) A second or subsequent violation of the
5 Methamphetamine Control and Community Protection Act.

6 (3) (Blank).

7 (4) A minimum term of imprisonment of not less than 10
8 consecutive days or 30 days of community service shall be
9 imposed for a violation of paragraph (c) of Section 6-303
10 of the Illinois Vehicle Code.

11 (4.1) (Blank).

12 (4.2) Except as provided in paragraph (4.3) of this
13 subsection (c), a minimum of 100 hours of community service
14 shall be imposed for a second violation of Section 6-303 of
15 the Illinois Vehicle Code.

16 (4.3) A minimum term of imprisonment of 30 days or 300
17 hours of community service, as determined by the court,
18 shall be imposed for a second violation of subsection (c)
19 of Section 6-303 of the Illinois Vehicle Code.

20 (4.4) Except as provided in paragraph (4.5) and
21 paragraph (4.6) of this subsection (c), a minimum term of
22 imprisonment of 30 days or 300 hours of community service,
23 as determined by the court, shall be imposed for a third or
24 subsequent violation of Section 6-303 of the Illinois
25 Vehicle Code.

26 (4.5) A minimum term of imprisonment of 30 days shall

1 be imposed for a third violation of subsection (c) of
2 Section 6-303 of the Illinois Vehicle Code.

3 (4.6) A minimum term of imprisonment of 180 days shall
4 be imposed for a fourth or subsequent violation of
5 subsection (c) of Section 6-303 of the Illinois Vehicle
6 Code.

7 (5) The court may sentence an offender convicted of a
8 business offense or a petty offense or a corporation or
9 unincorporated association convicted of any offense to:

10 (A) a period of conditional discharge;

11 (B) a fine;

12 (C) make restitution to the victim under Section
13 5-5-6 of this Code.

14 (5.1) In addition to any penalties imposed under
15 paragraph (5) of this subsection (c), and except as
16 provided in paragraph (5.2) or (5.3), a person convicted of
17 violating subsection (c) of Section 11-907 of the Illinois
18 Vehicle Code shall have his or her driver's license,
19 permit, or privileges suspended for at least 90 days but
20 not more than one year, if the violation resulted in damage
21 to the property of another person.

22 (5.2) In addition to any penalties imposed under
23 paragraph (5) of this subsection (c), and except as
24 provided in paragraph (5.3), a person convicted of
25 violating subsection (c) of Section 11-907 of the Illinois
26 Vehicle Code shall have his or her driver's license,

1 permit, or privileges suspended for at least 180 days but
2 not more than 2 years, if the violation resulted in injury
3 to another person.

4 (5.3) In addition to any penalties imposed under
5 paragraph (5) of this subsection (c), a person convicted of
6 violating subsection (c) of Section 11-907 of the Illinois
7 Vehicle Code shall have his or her driver's license,
8 permit, or privileges suspended for 2 years, if the
9 violation resulted in the death of another person.

10 (6) In no case shall an offender be eligible for a
11 disposition of probation or conditional discharge for a
12 Class 1 felony committed while he was serving a term of
13 probation or conditional discharge for a felony.

14 (7) When a defendant is adjudged a habitual criminal
15 under Article 33B of the Criminal Code of 1961, the court
16 shall sentence the defendant to a term of natural life
17 imprisonment.

18 (8) When a defendant, over the age of 21 years, is
19 convicted of a Class 1 or Class 2 felony, after having
20 twice been convicted in any state or federal court of an
21 offense that contains the same elements as an offense now
22 classified in Illinois as a Class 2 or greater Class felony
23 and such charges are separately brought and tried and arise
24 out of different series of acts, such defendant shall be
25 sentenced as a Class X offender. This paragraph shall not
26 apply unless (1) the first felony was committed after the

1 effective date of this amendatory Act of 1977; and (2) the
2 second felony was committed after conviction on the first;
3 and (3) the third felony was committed after conviction on
4 the second. A person sentenced as a Class X offender under
5 this paragraph is not eligible to apply for treatment as a
6 condition of probation as provided by Section 40-10 of the
7 Alcoholism and Other Drug Abuse and Dependency Act.

8 (9) A defendant convicted of a second or subsequent
9 offense of ritualized abuse of a child may be sentenced to
10 a term of natural life imprisonment.

11 (10) (Blank).

12 (11) The court shall impose a minimum fine of \$1,000
13 for a first offense and \$2,000 for a second or subsequent
14 offense upon a person convicted of or placed on supervision
15 for battery when the individual harmed was a sports
16 official or coach at any level of competition and the act
17 causing harm to the sports official or coach occurred
18 within an athletic facility or within the immediate
19 vicinity of the athletic facility at which the sports
20 official or coach was an active participant of the athletic
21 contest held at the athletic facility. For the purposes of
22 this paragraph (11), "sports official" means a person at an
23 athletic contest who enforces the rules of the contest,
24 such as an umpire or referee; "athletic facility" means an
25 indoor or outdoor playing field or recreational area where
26 sports activities are conducted; and "coach" means a person

1 recognized as a coach by the sanctioning authority that
2 conducted the sporting event.

3 (12) A person may not receive a disposition of court
4 supervision for a violation of Section 5-16 of the Boat
5 Registration and Safety Act if that person has previously
6 received a disposition of court supervision for a violation
7 of that Section.

8 (d) In any case in which a sentence originally imposed is
9 vacated, the case shall be remanded to the trial court. The
10 trial court shall hold a hearing under Section 5-4-1 of the
11 Unified Code of Corrections which may include evidence of the
12 defendant's life, moral character and occupation during the
13 time since the original sentence was passed. The trial court
14 shall then impose sentence upon the defendant. The trial court
15 may impose any sentence which could have been imposed at the
16 original trial subject to Section 5-5-4 of the Unified Code of
17 Corrections. If a sentence is vacated on appeal or on
18 collateral attack due to the failure of the trier of fact at
19 trial to determine beyond a reasonable doubt the existence of a
20 fact (other than a prior conviction) necessary to increase the
21 punishment for the offense beyond the statutory maximum
22 otherwise applicable, either the defendant may be re-sentenced
23 to a term within the range otherwise provided or, if the State
24 files notice of its intention to again seek the extended
25 sentence, the defendant shall be afforded a new trial.

26 (e) In cases where prosecution for aggravated criminal

1 sexual abuse under Section 12-16 of the Criminal Code of 1961
2 results in conviction of a defendant who was a family member of
3 the victim at the time of the commission of the offense, the
4 court shall consider the safety and welfare of the victim and
5 may impose a sentence of probation only where:

6 (1) the court finds (A) or (B) or both are appropriate:

7 (A) the defendant is willing to undergo a court
8 approved counseling program for a minimum duration of 2
9 years; or

10 (B) the defendant is willing to participate in a
11 court approved plan including but not limited to the
12 defendant's:

13 (i) removal from the household;

14 (ii) restricted contact with the victim;

15 (iii) continued financial support of the
16 family;

17 (iv) restitution for harm done to the victim;

18 and

19 (v) compliance with any other measures that
20 the court may deem appropriate; and

21 (2) the court orders the defendant to pay for the
22 victim's counseling services, to the extent that the court
23 finds, after considering the defendant's income and
24 assets, that the defendant is financially capable of paying
25 for such services, if the victim was under 18 years of age
26 at the time the offense was committed and requires

1 counseling as a result of the offense.

2 Probation may be revoked or modified pursuant to Section
3 5-6-4; except where the court determines at the hearing that
4 the defendant violated a condition of his or her probation
5 restricting contact with the victim or other family members or
6 commits another offense with the victim or other family
7 members, the court shall revoke the defendant's probation and
8 impose a term of imprisonment.

9 For the purposes of this Section, "family member" and
10 "victim" shall have the meanings ascribed to them in Section
11 12-12 of the Criminal Code of 1961.

12 (f) This Article shall not deprive a court in other
13 proceedings to order a forfeiture of property, to suspend or
14 cancel a license, to remove a person from office, or to impose
15 any other civil penalty.

16 (g) Whenever a defendant is convicted of an offense under
17 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
18 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
19 of the Criminal Code of 1961, the defendant shall undergo
20 medical testing to determine whether the defendant has any
21 sexually transmissible disease, including a test for infection
22 with human immunodeficiency virus (HIV) or any other identified
23 causative agent of acquired immunodeficiency syndrome (AIDS).
24 Any such medical test shall be performed only by appropriately
25 licensed medical practitioners and may include an analysis of
26 any bodily fluids as well as an examination of the defendant's

1 person. Except as otherwise provided by law, the results of
2 such test shall be kept strictly confidential by all medical
3 personnel involved in the testing and must be personally
4 delivered in a sealed envelope to the judge of the court in
5 which the conviction was entered for the judge's inspection in
6 camera. Acting in accordance with the best interests of the
7 victim and the public, the judge shall have the discretion to
8 determine to whom, if anyone, the results of the testing may be
9 revealed. The court shall notify the defendant of the test
10 results. The court shall also notify the victim if requested by
11 the victim, and if the victim is under the age of 15 and if
12 requested by the victim's parents or legal guardian, the court
13 shall notify the victim's parents or legal guardian of the test
14 results. The court shall provide information on the
15 availability of HIV testing and counseling at Department of
16 Public Health facilities to all parties to whom the results of
17 the testing are revealed and shall direct the State's Attorney
18 to provide the information to the victim when possible. A
19 State's Attorney may petition the court to obtain the results
20 of any HIV test administered under this Section, and the court
21 shall grant the disclosure if the State's Attorney shows it is
22 relevant in order to prosecute a charge of criminal
23 transmission of HIV under Section 12-16.2 of the Criminal Code
24 of 1961 against the defendant. The court shall order that the
25 cost of any such test shall be paid by the county and may be
26 taxed as costs against the convicted defendant.

1 (g-5) When an inmate is tested for an airborne communicable
2 disease, as determined by the Illinois Department of Public
3 Health including but not limited to tuberculosis, the results
4 of the test shall be personally delivered by the warden or his
5 or her designee in a sealed envelope to the judge of the court
6 in which the inmate must appear for the judge's inspection in
7 camera if requested by the judge. Acting in accordance with the
8 best interests of those in the courtroom, the judge shall have
9 the discretion to determine what if any precautions need to be
10 taken to prevent transmission of the disease in the courtroom.

11 (h) Whenever a defendant is convicted of an offense under
12 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the
13 defendant shall undergo medical testing to determine whether
14 the defendant has been exposed to human immunodeficiency virus
15 (HIV) or any other identified causative agent of acquired
16 immunodeficiency syndrome (AIDS). Except as otherwise provided
17 by law, the results of such test shall be kept strictly
18 confidential by all medical personnel involved in the testing
19 and must be personally delivered in a sealed envelope to the
20 judge of the court in which the conviction was entered for the
21 judge's inspection in camera. Acting in accordance with the
22 best interests of the public, the judge shall have the
23 discretion to determine to whom, if anyone, the results of the
24 testing may be revealed. The court shall notify the defendant
25 of a positive test showing an infection with the human
26 immunodeficiency virus (HIV). The court shall provide

1 information on the availability of HIV testing and counseling
2 at Department of Public Health facilities to all parties to
3 whom the results of the testing are revealed and shall direct
4 the State's Attorney to provide the information to the victim
5 when possible. A State's Attorney may petition the court to
6 obtain the results of any HIV test administered under this
7 Section, and the court shall grant the disclosure if the
8 State's Attorney shows it is relevant in order to prosecute a
9 charge of criminal transmission of HIV under Section 12-16.2 of
10 the Criminal Code of 1961 against the defendant. The court
11 shall order that the cost of any such test shall be paid by the
12 county and may be taxed as costs against the convicted
13 defendant.

14 (i) All fines and penalties imposed under this Section for
15 any violation of Chapters 3, 4, 6, and 11 of the Illinois
16 Vehicle Code, or a similar provision of a local ordinance, and
17 any violation of the Child Passenger Protection Act, or a
18 similar provision of a local ordinance, shall be collected and
19 disbursed by the circuit clerk as provided under Section 27.5
20 of the Clerks of Courts Act.

21 (j) In cases when prosecution for any violation of Section
22 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
23 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
24 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
25 Code of 1961, any violation of the Illinois Controlled
26 Substances Act, any violation of the Cannabis Control Act, or

1 any violation of the Methamphetamine Control and Community
2 Protection Act results in conviction, a disposition of court
3 supervision, or an order of probation granted under Section 10
4 of the Cannabis Control Act, Section 410 of the Illinois
5 Controlled Substance Act, or Section 70 of the Methamphetamine
6 Control and Community Protection Act of a defendant, the court
7 shall determine whether the defendant is employed by a facility
8 or center as defined under the Child Care Act of 1969, a public
9 or private elementary or secondary school, or otherwise works
10 with children under 18 years of age on a daily basis. When a
11 defendant is so employed, the court shall order the Clerk of
12 the Court to send a copy of the judgment of conviction or order
13 of supervision or probation to the defendant's employer by
14 certified mail. If the employer of the defendant is a school,
15 the Clerk of the Court shall direct the mailing of a copy of
16 the judgment of conviction or order of supervision or probation
17 to the appropriate regional superintendent of schools. The
18 regional superintendent of schools shall notify the State Board
19 of Education of any notification under this subsection.

20 (j-5) A defendant at least 17 years of age who is convicted
21 of a felony and who has not been previously convicted of a
22 misdemeanor or felony and who is sentenced to a term of
23 imprisonment in the Illinois Department of Corrections shall as
24 a condition of his or her sentence be required by the court to
25 attend educational courses designed to prepare the defendant
26 for a high school diploma and to work toward a high school

1 diploma or to work toward passing the high school level Test of
2 General Educational Development (GED) or to work toward
3 completing a vocational training program offered by the
4 Department of Corrections. If a defendant fails to complete the
5 educational training required by his or her sentence during the
6 term of incarceration, the Prisoner Review Board shall, as a
7 condition of mandatory supervised release, require the
8 defendant, at his or her own expense, to pursue a course of
9 study toward a high school diploma or passage of the GED test.
10 The Prisoner Review Board shall revoke the mandatory supervised
11 release of a defendant who wilfully fails to comply with this
12 subsection (j-5) upon his or her release from confinement in a
13 penal institution while serving a mandatory supervised release
14 term; however, the inability of the defendant after making a
15 good faith effort to obtain financial aid or pay for the
16 educational training shall not be deemed a wilful failure to
17 comply. The Prisoner Review Board shall recommit the defendant
18 whose mandatory supervised release term has been revoked under
19 this subsection (j-5) as provided in Section 3-3-9. This
20 subsection (j-5) does not apply to a defendant who has a high
21 school diploma or has successfully passed the GED test. This
22 subsection (j-5) does not apply to a defendant who is
23 determined by the court to be developmentally disabled or
24 otherwise mentally incapable of completing the educational or
25 vocational program.

26 (k) A court may not impose a sentence or disposition for a

1 felony or misdemeanor that requires the defendant to be
2 implanted or injected with or to use any form of birth control.

3 (1) (A) Except as provided in paragraph (C) of subsection
4 (1), whenever a defendant, who is an alien as defined by
5 the Immigration and Nationality Act, is convicted of any
6 felony or misdemeanor offense, the court after sentencing
7 the defendant may, upon motion of the State's Attorney,
8 hold sentence in abeyance and remand the defendant to the
9 custody of the Attorney General of the United States or his
10 or her designated agent to be deported when:

11 (1) a final order of deportation has been issued
12 against the defendant pursuant to proceedings under
13 the Immigration and Nationality Act, and

14 (2) the deportation of the defendant would not
15 deprecate the seriousness of the defendant's conduct
16 and would not be inconsistent with the ends of justice.

17 Otherwise, the defendant shall be sentenced as
18 provided in this Chapter V.

19 (B) If the defendant has already been sentenced for a
20 felony or misdemeanor offense, or has been placed on
21 probation under Section 10 of the Cannabis Control Act,
22 Section 410 of the Illinois Controlled Substances Act, or
23 Section 70 of the Methamphetamine Control and Community
24 Protection Act, the court may, upon motion of the State's
25 Attorney to suspend the sentence imposed, commit the
26 defendant to the custody of the Attorney General of the

1 United States or his or her designated agent when:

2 (1) a final order of deportation has been issued
3 against the defendant pursuant to proceedings under
4 the Immigration and Nationality Act, and

5 (2) the deportation of the defendant would not
6 deprecate the seriousness of the defendant's conduct
7 and would not be inconsistent with the ends of justice.

8 (C) This subsection (1) does not apply to offenders who
9 are subject to the provisions of paragraph (2) of
10 subsection (a) of Section 3-6-3.

11 (D) Upon motion of the State's Attorney, if a defendant
12 sentenced under this Section returns to the jurisdiction of
13 the United States, the defendant shall be recommitted to
14 the custody of the county from which he or she was
15 sentenced. Thereafter, the defendant shall be brought
16 before the sentencing court, which may impose any sentence
17 that was available under Section 5-5-3 at the time of
18 initial sentencing. In addition, the defendant shall not be
19 eligible for additional good conduct credit for
20 meritorious service as provided under Section 3-6-6.

21 (m) A person convicted of criminal defacement of property
22 under Section 21-1.3 of the Criminal Code of 1961, in which the
23 property damage exceeds \$300 and the property damaged is a
24 school building, shall be ordered to perform community service
25 that may include cleanup, removal, or painting over the
26 defacement.

1 (n) The court may sentence a person convicted of a
2 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
3 Code of 1961 (i) to an impact incarceration program if the
4 person is otherwise eligible for that program under Section
5 5-8-1.1, (ii) to community service, or (iii) if the person is
6 an addict or alcoholic, as defined in the Alcoholism and Other
7 Drug Abuse and Dependency Act, to a substance or alcohol abuse
8 program licensed under that Act.

9 (o) Whenever a person is convicted of a sex offense as
10 defined in Section 2 of the Sex Offender Registration Act, the
11 defendant's driver's license or permit shall be subject to
12 renewal on an annual basis in accordance with the provisions of
13 license renewal established by the Secretary of State.

14 (Source: P.A. 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
15 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
16 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
17 eff. 1-1-05; 93-1014, eff. 1-1-05; 94-72, eff. 1-1-06; 94-556,
18 eff. 9-11-05; 94-993, eff. 1-1-07.)

19 (Text of Section after amendment by P.A. 94-1035)

20 Sec. 5-5-3. Disposition.

21 (a) Except as provided in Section 11-501 of the Illinois
22 Vehicle Code, every person convicted of an offense shall be
23 sentenced as provided in this Section.

24 (b) The following options shall be appropriate
25 dispositions, alone or in combination, for all felonies and

1 misdemeanors other than those identified in subsection (c) of
2 this Section:

3 (1) A period of probation.

4 (2) A term of periodic imprisonment.

5 (3) A term of conditional discharge.

6 (4) A term of imprisonment.

7 (5) An order directing the offender to clean up and
8 repair the damage, if the offender was convicted under
9 paragraph (h) of Section 21-1 of the Criminal Code of 1961
10 (now repealed).

11 (6) A fine.

12 (7) An order directing the offender to make restitution
13 to the victim under Section 5-5-6 of this Code.

14 (8) A sentence of participation in a county impact
15 incarceration program under Section 5-8-1.2 of this Code.

16 (9) A term of imprisonment in combination with a term
17 of probation when the offender has been admitted into a
18 drug court program under Section 20 of the Drug Court
19 Treatment Act.

20 Neither a fine nor restitution shall be the sole
21 disposition for a felony and either or both may be imposed only
22 in conjunction with another disposition.

23 (c) (1) When a defendant is found guilty of first degree
24 murder the defendant shall be sentenced to a term of State
25 ~~may either seek a sentence of~~ imprisonment under Section
26 5-8-1 of this Code, ~~or where appropriate seek a sentence of~~

1 ~~death under Section 9-1 of the Criminal Code of 1961.~~

2 (2) A period of probation, a term of periodic
3 imprisonment or conditional discharge shall not be imposed
4 for the following offenses. The court shall sentence the
5 offender to not less than the minimum term of imprisonment
6 set forth in this Code for the following offenses, and may
7 order a fine or restitution or both in conjunction with
8 such term of imprisonment:

9 (A) First degree murder ~~where the death penalty is~~
10 ~~not imposed.~~

11 (B) Attempted first degree murder.

12 (C) A Class X felony.

13 (D) A violation of Section 401.1 or 407 of the
14 Illinois Controlled Substances Act, or a violation of
15 subdivision (c) (1) or (c) (2) of Section 401 of that Act
16 which relates to more than 5 grams of a substance
17 containing heroin or cocaine or an analog thereof.

18 (E) A violation of Section 5.1 or 9 of the Cannabis
19 Control Act.

20 (F) A Class 2 or greater felony if the offender had
21 been convicted of a Class 2 or greater felony within 10
22 years of the date on which the offender committed the
23 offense for which he or she is being sentenced, except
24 as otherwise provided in Section 40-10 of the
25 Alcoholism and Other Drug Abuse and Dependency Act.

26 (F-5) A violation of Section 24-1, 24-1.1, or

1 24-1.6 of the Criminal Code of 1961 for which
2 imprisonment is prescribed in those Sections.

3 (G) Residential burglary, except as otherwise
4 provided in Section 40-10 of the Alcoholism and Other
5 Drug Abuse and Dependency Act.

6 (H) Criminal sexual assault.

7 (I) Aggravated battery of a senior citizen.

8 (J) A forcible felony if the offense was related to
9 the activities of an organized gang.

10 Before July 1, 1994, for the purposes of this
11 paragraph, "organized gang" means an association of 5
12 or more persons, with an established hierarchy, that
13 encourages members of the association to perpetrate
14 crimes or provides support to the members of the
15 association who do commit crimes.

16 Beginning July 1, 1994, for the purposes of this
17 paragraph, "organized gang" has the meaning ascribed
18 to it in Section 10 of the Illinois Streetgang
19 Terrorism Omnibus Prevention Act.

20 (K) Vehicular hijacking.

21 (L) A second or subsequent conviction for the
22 offense of hate crime when the underlying offense upon
23 which the hate crime is based is felony aggravated
24 assault or felony mob action.

25 (M) A second or subsequent conviction for the
26 offense of institutional vandalism if the damage to the

1 property exceeds \$300.

2 (N) A Class 3 felony violation of paragraph (1) of
3 subsection (a) of Section 2 of the Firearm Owners
4 Identification Card Act.

5 (O) A violation of Section 12-6.1 of the Criminal
6 Code of 1961.

7 (P) A violation of paragraph (1), (2), (3), (4),
8 (5), or (7) of subsection (a) of Section 11-20.1 of the
9 Criminal Code of 1961.

10 (Q) A violation of Section 20-1.2 or 20-1.3 of the
11 Criminal Code of 1961.

12 (R) A violation of Section 24-3A of the Criminal
13 Code of 1961.

14 (S) (Blank).

15 (T) A second or subsequent violation of the
16 Methamphetamine Control and Community Protection Act.

17 (3) (Blank).

18 (4) A minimum term of imprisonment of not less than 10
19 consecutive days or 30 days of community service shall be
20 imposed for a violation of paragraph (c) of Section 6-303
21 of the Illinois Vehicle Code.

22 (4.1) (Blank).

23 (4.2) Except as provided in paragraph (4.3) of this
24 subsection (c), a minimum of 100 hours of community service
25 shall be imposed for a second violation of Section 6-303 of
26 the Illinois Vehicle Code.

1 (4.3) A minimum term of imprisonment of 30 days or 300
2 hours of community service, as determined by the court,
3 shall be imposed for a second violation of subsection (c)
4 of Section 6-303 of the Illinois Vehicle Code.

5 (4.4) Except as provided in paragraph (4.5) and
6 paragraph (4.6) of this subsection (c), a minimum term of
7 imprisonment of 30 days or 300 hours of community service,
8 as determined by the court, shall be imposed for a third or
9 subsequent violation of Section 6-303 of the Illinois
10 Vehicle Code.

11 (4.5) A minimum term of imprisonment of 30 days shall
12 be imposed for a third violation of subsection (c) of
13 Section 6-303 of the Illinois Vehicle Code.

14 (4.6) A minimum term of imprisonment of 180 days shall
15 be imposed for a fourth or subsequent violation of
16 subsection (c) of Section 6-303 of the Illinois Vehicle
17 Code.

18 (5) The court may sentence an offender convicted of a
19 business offense or a petty offense or a corporation or
20 unincorporated association convicted of any offense to:

21 (A) a period of conditional discharge;

22 (B) a fine;

23 (C) make restitution to the victim under Section
24 5-5-6 of this Code.

25 (5.1) In addition to any penalties imposed under
26 paragraph (5) of this subsection (c), and except as

1 provided in paragraph (5.2) or (5.3), a person convicted of
2 violating subsection (c) of Section 11-907 of the Illinois
3 Vehicle Code shall have his or her driver's license,
4 permit, or privileges suspended for at least 90 days but
5 not more than one year, if the violation resulted in damage
6 to the property of another person.

7 (5.2) In addition to any penalties imposed under
8 paragraph (5) of this subsection (c), and except as
9 provided in paragraph (5.3), a person convicted of
10 violating subsection (c) of Section 11-907 of the Illinois
11 Vehicle Code shall have his or her driver's license,
12 permit, or privileges suspended for at least 180 days but
13 not more than 2 years, if the violation resulted in injury
14 to another person.

15 (5.3) In addition to any penalties imposed under
16 paragraph (5) of this subsection (c), a person convicted of
17 violating subsection (c) of Section 11-907 of the Illinois
18 Vehicle Code shall have his or her driver's license,
19 permit, or privileges suspended for 2 years, if the
20 violation resulted in the death of another person.

21 (5.4) In addition to any penalties imposed under
22 paragraph (5) of this subsection (c), a person convicted of
23 violating Section 3-707 of the Illinois Vehicle Code shall
24 have his or her driver's license, permit, or privileges
25 suspended for 3 months and until he or she has paid a
26 reinstatement fee of \$100.

1 (5.5) In addition to any penalties imposed under
2 paragraph (5) of this subsection (c), a person convicted of
3 violating Section 3-707 of the Illinois Vehicle Code during
4 a period in which his or her driver's license, permit, or
5 privileges were suspended for a previous violation of that
6 Section shall have his or her driver's license, permit, or
7 privileges suspended for an additional 6 months after the
8 expiration of the original 3-month suspension and until he
9 or she has paid a reinstatement fee of \$100.

10 (6) In no case shall an offender be eligible for a
11 disposition of probation or conditional discharge for a
12 Class 1 felony committed while he was serving a term of
13 probation or conditional discharge for a felony.

14 (7) When a defendant is adjudged a habitual criminal
15 under Article 33B of the Criminal Code of 1961, the court
16 shall sentence the defendant to a term of natural life
17 imprisonment.

18 (8) When a defendant, over the age of 21 years, is
19 convicted of a Class 1 or Class 2 felony, after having
20 twice been convicted in any state or federal court of an
21 offense that contains the same elements as an offense now
22 classified in Illinois as a Class 2 or greater Class felony
23 and such charges are separately brought and tried and arise
24 out of different series of acts, such defendant shall be
25 sentenced as a Class X offender. This paragraph shall not
26 apply unless (1) the first felony was committed after the

1 effective date of this amendatory Act of 1977; and (2) the
2 second felony was committed after conviction on the first;
3 and (3) the third felony was committed after conviction on
4 the second. A person sentenced as a Class X offender under
5 this paragraph is not eligible to apply for treatment as a
6 condition of probation as provided by Section 40-10 of the
7 Alcoholism and Other Drug Abuse and Dependency Act.

8 (9) A defendant convicted of a second or subsequent
9 offense of ritualized abuse of a child may be sentenced to
10 a term of natural life imprisonment.

11 (10) (Blank).

12 (11) The court shall impose a minimum fine of \$1,000
13 for a first offense and \$2,000 for a second or subsequent
14 offense upon a person convicted of or placed on supervision
15 for battery when the individual harmed was a sports
16 official or coach at any level of competition and the act
17 causing harm to the sports official or coach occurred
18 within an athletic facility or within the immediate
19 vicinity of the athletic facility at which the sports
20 official or coach was an active participant of the athletic
21 contest held at the athletic facility. For the purposes of
22 this paragraph (11), "sports official" means a person at an
23 athletic contest who enforces the rules of the contest,
24 such as an umpire or referee; "athletic facility" means an
25 indoor or outdoor playing field or recreational area where
26 sports activities are conducted; and "coach" means a person

1 recognized as a coach by the sanctioning authority that
2 conducted the sporting event.

3 (12) A person may not receive a disposition of court
4 supervision for a violation of Section 5-16 of the Boat
5 Registration and Safety Act if that person has previously
6 received a disposition of court supervision for a violation
7 of that Section.

8 (d) In any case in which a sentence originally imposed is
9 vacated, the case shall be remanded to the trial court. The
10 trial court shall hold a hearing under Section 5-4-1 of the
11 Unified Code of Corrections which may include evidence of the
12 defendant's life, moral character and occupation during the
13 time since the original sentence was passed. The trial court
14 shall then impose sentence upon the defendant. The trial court
15 may impose any sentence which could have been imposed at the
16 original trial subject to Section 5-5-4 of the Unified Code of
17 Corrections. If a sentence is vacated on appeal or on
18 collateral attack due to the failure of the trier of fact at
19 trial to determine beyond a reasonable doubt the existence of a
20 fact (other than a prior conviction) necessary to increase the
21 punishment for the offense beyond the statutory maximum
22 otherwise applicable, either the defendant may be re-sentenced
23 to a term within the range otherwise provided or, if the State
24 files notice of its intention to again seek the extended
25 sentence, the defendant shall be afforded a new trial.

26 (e) In cases where prosecution for aggravated criminal

1 sexual abuse under Section 12-16 of the Criminal Code of 1961
2 results in conviction of a defendant who was a family member of
3 the victim at the time of the commission of the offense, the
4 court shall consider the safety and welfare of the victim and
5 may impose a sentence of probation only where:

6 (1) the court finds (A) or (B) or both are appropriate:

7 (A) the defendant is willing to undergo a court
8 approved counseling program for a minimum duration of 2
9 years; or

10 (B) the defendant is willing to participate in a
11 court approved plan including but not limited to the
12 defendant's:

13 (i) removal from the household;

14 (ii) restricted contact with the victim;

15 (iii) continued financial support of the
16 family;

17 (iv) restitution for harm done to the victim;

18 and

19 (v) compliance with any other measures that
20 the court may deem appropriate; and

21 (2) the court orders the defendant to pay for the
22 victim's counseling services, to the extent that the court
23 finds, after considering the defendant's income and
24 assets, that the defendant is financially capable of paying
25 for such services, if the victim was under 18 years of age
26 at the time the offense was committed and requires

1 counseling as a result of the offense.

2 Probation may be revoked or modified pursuant to Section
3 5-6-4; except where the court determines at the hearing that
4 the defendant violated a condition of his or her probation
5 restricting contact with the victim or other family members or
6 commits another offense with the victim or other family
7 members, the court shall revoke the defendant's probation and
8 impose a term of imprisonment.

9 For the purposes of this Section, "family member" and
10 "victim" shall have the meanings ascribed to them in Section
11 12-12 of the Criminal Code of 1961.

12 (f) This Article shall not deprive a court in other
13 proceedings to order a forfeiture of property, to suspend or
14 cancel a license, to remove a person from office, or to impose
15 any other civil penalty.

16 (g) Whenever a defendant is convicted of an offense under
17 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,
18 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16
19 of the Criminal Code of 1961, the defendant shall undergo
20 medical testing to determine whether the defendant has any
21 sexually transmissible disease, including a test for infection
22 with human immunodeficiency virus (HIV) or any other identified
23 causative agent of acquired immunodeficiency syndrome (AIDS).
24 Any such medical test shall be performed only by appropriately
25 licensed medical practitioners and may include an analysis of
26 any bodily fluids as well as an examination of the defendant's

1 person. Except as otherwise provided by law, the results of
2 such test shall be kept strictly confidential by all medical
3 personnel involved in the testing and must be personally
4 delivered in a sealed envelope to the judge of the court in
5 which the conviction was entered for the judge's inspection in
6 camera. Acting in accordance with the best interests of the
7 victim and the public, the judge shall have the discretion to
8 determine to whom, if anyone, the results of the testing may be
9 revealed. The court shall notify the defendant of the test
10 results. The court shall also notify the victim if requested by
11 the victim, and if the victim is under the age of 15 and if
12 requested by the victim's parents or legal guardian, the court
13 shall notify the victim's parents or legal guardian of the test
14 results. The court shall provide information on the
15 availability of HIV testing and counseling at Department of
16 Public Health facilities to all parties to whom the results of
17 the testing are revealed and shall direct the State's Attorney
18 to provide the information to the victim when possible. A
19 State's Attorney may petition the court to obtain the results
20 of any HIV test administered under this Section, and the court
21 shall grant the disclosure if the State's Attorney shows it is
22 relevant in order to prosecute a charge of criminal
23 transmission of HIV under Section 12-16.2 of the Criminal Code
24 of 1961 against the defendant. The court shall order that the
25 cost of any such test shall be paid by the county and may be
26 taxed as costs against the convicted defendant.

1 (g-5) When an inmate is tested for an airborne communicable
2 disease, as determined by the Illinois Department of Public
3 Health including but not limited to tuberculosis, the results
4 of the test shall be personally delivered by the warden or his
5 or her designee in a sealed envelope to the judge of the court
6 in which the inmate must appear for the judge's inspection in
7 camera if requested by the judge. Acting in accordance with the
8 best interests of those in the courtroom, the judge shall have
9 the discretion to determine what if any precautions need to be
10 taken to prevent transmission of the disease in the courtroom.

11 (h) Whenever a defendant is convicted of an offense under
12 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the
13 defendant shall undergo medical testing to determine whether
14 the defendant has been exposed to human immunodeficiency virus
15 (HIV) or any other identified causative agent of acquired
16 immunodeficiency syndrome (AIDS). Except as otherwise provided
17 by law, the results of such test shall be kept strictly
18 confidential by all medical personnel involved in the testing
19 and must be personally delivered in a sealed envelope to the
20 judge of the court in which the conviction was entered for the
21 judge's inspection in camera. Acting in accordance with the
22 best interests of the public, the judge shall have the
23 discretion to determine to whom, if anyone, the results of the
24 testing may be revealed. The court shall notify the defendant
25 of a positive test showing an infection with the human
26 immunodeficiency virus (HIV). The court shall provide

1 information on the availability of HIV testing and counseling
2 at Department of Public Health facilities to all parties to
3 whom the results of the testing are revealed and shall direct
4 the State's Attorney to provide the information to the victim
5 when possible. A State's Attorney may petition the court to
6 obtain the results of any HIV test administered under this
7 Section, and the court shall grant the disclosure if the
8 State's Attorney shows it is relevant in order to prosecute a
9 charge of criminal transmission of HIV under Section 12-16.2 of
10 the Criminal Code of 1961 against the defendant. The court
11 shall order that the cost of any such test shall be paid by the
12 county and may be taxed as costs against the convicted
13 defendant.

14 (i) All fines and penalties imposed under this Section for
15 any violation of Chapters 3, 4, 6, and 11 of the Illinois
16 Vehicle Code, or a similar provision of a local ordinance, and
17 any violation of the Child Passenger Protection Act, or a
18 similar provision of a local ordinance, shall be collected and
19 disbursed by the circuit clerk as provided under Section 27.5
20 of the Clerks of Courts Act.

21 (j) In cases when prosecution for any violation of Section
22 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,
23 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,
24 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal
25 Code of 1961, any violation of the Illinois Controlled
26 Substances Act, any violation of the Cannabis Control Act, or

1 any violation of the Methamphetamine Control and Community
2 Protection Act results in conviction, a disposition of court
3 supervision, or an order of probation granted under Section 10
4 of the Cannabis Control Act, Section 410 of the Illinois
5 Controlled Substance Act, or Section 70 of the Methamphetamine
6 Control and Community Protection Act of a defendant, the court
7 shall determine whether the defendant is employed by a facility
8 or center as defined under the Child Care Act of 1969, a public
9 or private elementary or secondary school, or otherwise works
10 with children under 18 years of age on a daily basis. When a
11 defendant is so employed, the court shall order the Clerk of
12 the Court to send a copy of the judgment of conviction or order
13 of supervision or probation to the defendant's employer by
14 certified mail. If the employer of the defendant is a school,
15 the Clerk of the Court shall direct the mailing of a copy of
16 the judgment of conviction or order of supervision or probation
17 to the appropriate regional superintendent of schools. The
18 regional superintendent of schools shall notify the State Board
19 of Education of any notification under this subsection.

20 (j-5) A defendant at least 17 years of age who is convicted
21 of a felony and who has not been previously convicted of a
22 misdemeanor or felony and who is sentenced to a term of
23 imprisonment in the Illinois Department of Corrections shall as
24 a condition of his or her sentence be required by the court to
25 attend educational courses designed to prepare the defendant
26 for a high school diploma and to work toward a high school

1 diploma or to work toward passing the high school level Test of
2 General Educational Development (GED) or to work toward
3 completing a vocational training program offered by the
4 Department of Corrections. If a defendant fails to complete the
5 educational training required by his or her sentence during the
6 term of incarceration, the Prisoner Review Board shall, as a
7 condition of mandatory supervised release, require the
8 defendant, at his or her own expense, to pursue a course of
9 study toward a high school diploma or passage of the GED test.
10 The Prisoner Review Board shall revoke the mandatory supervised
11 release of a defendant who wilfully fails to comply with this
12 subsection (j-5) upon his or her release from confinement in a
13 penal institution while serving a mandatory supervised release
14 term; however, the inability of the defendant after making a
15 good faith effort to obtain financial aid or pay for the
16 educational training shall not be deemed a wilful failure to
17 comply. The Prisoner Review Board shall recommit the defendant
18 whose mandatory supervised release term has been revoked under
19 this subsection (j-5) as provided in Section 3-3-9. This
20 subsection (j-5) does not apply to a defendant who has a high
21 school diploma or has successfully passed the GED test. This
22 subsection (j-5) does not apply to a defendant who is
23 determined by the court to be developmentally disabled or
24 otherwise mentally incapable of completing the educational or
25 vocational program.

26 (k) A court may not impose a sentence or disposition for a

1 felony or misdemeanor that requires the defendant to be
2 implanted or injected with or to use any form of birth control.

3 (1) (A) Except as provided in paragraph (C) of subsection
4 (1), whenever a defendant, who is an alien as defined by
5 the Immigration and Nationality Act, is convicted of any
6 felony or misdemeanor offense, the court after sentencing
7 the defendant may, upon motion of the State's Attorney,
8 hold sentence in abeyance and remand the defendant to the
9 custody of the Attorney General of the United States or his
10 or her designated agent to be deported when:

11 (1) a final order of deportation has been issued
12 against the defendant pursuant to proceedings under
13 the Immigration and Nationality Act, and

14 (2) the deportation of the defendant would not
15 deprecate the seriousness of the defendant's conduct
16 and would not be inconsistent with the ends of justice.

17 Otherwise, the defendant shall be sentenced as
18 provided in this Chapter V.

19 (B) If the defendant has already been sentenced for a
20 felony or misdemeanor offense, or has been placed on
21 probation under Section 10 of the Cannabis Control Act,
22 Section 410 of the Illinois Controlled Substances Act, or
23 Section 70 of the Methamphetamine Control and Community
24 Protection Act, the court may, upon motion of the State's
25 Attorney to suspend the sentence imposed, commit the
26 defendant to the custody of the Attorney General of the

1 United States or his or her designated agent when:

2 (1) a final order of deportation has been issued
3 against the defendant pursuant to proceedings under
4 the Immigration and Nationality Act, and

5 (2) the deportation of the defendant would not
6 deprecate the seriousness of the defendant's conduct
7 and would not be inconsistent with the ends of justice.

8 (C) This subsection (1) does not apply to offenders who
9 are subject to the provisions of paragraph (2) of
10 subsection (a) of Section 3-6-3.

11 (D) Upon motion of the State's Attorney, if a defendant
12 sentenced under this Section returns to the jurisdiction of
13 the United States, the defendant shall be recommitted to
14 the custody of the county from which he or she was
15 sentenced. Thereafter, the defendant shall be brought
16 before the sentencing court, which may impose any sentence
17 that was available under Section 5-5-3 at the time of
18 initial sentencing. In addition, the defendant shall not be
19 eligible for additional good conduct credit for
20 meritorious service as provided under Section 3-6-6.

21 (m) A person convicted of criminal defacement of property
22 under Section 21-1.3 of the Criminal Code of 1961, in which the
23 property damage exceeds \$300 and the property damaged is a
24 school building, shall be ordered to perform community service
25 that may include cleanup, removal, or painting over the
26 defacement.

1 (n) The court may sentence a person convicted of a
2 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal
3 Code of 1961 (i) to an impact incarceration program if the
4 person is otherwise eligible for that program under Section
5 5-8-1.1, (ii) to community service, or (iii) if the person is
6 an addict or alcoholic, as defined in the Alcoholism and Other
7 Drug Abuse and Dependency Act, to a substance or alcohol abuse
8 program licensed under that Act.

9 (o) Whenever a person is convicted of a sex offense as
10 defined in Section 2 of the Sex Offender Registration Act, the
11 defendant's driver's license or permit shall be subject to
12 renewal on an annual basis in accordance with the provisions of
13 license renewal established by the Secretary of State.

14 (Source: P.A. 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,
15 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,
16 eff. 1-1-04; 93-694, eff. 7-9-04; 93-782, eff. 1-1-05; 93-800,
17 eff. 1-1-05; 93-1014, eff. 1-1-05; 94-72, eff. 1-1-06; 94-556,
18 eff. 9-11-05; 94-993, eff. 1-1-07; 94-1035, eff. 7-1-07;
19 revised 8-28-06.)

20 (730 ILCS 5/5-8-1) (from Ch. 38, par. 1005-8-1)

21 Sec. 5-8-1. Sentence of Imprisonment for Felony.

22 (a) Except as otherwise provided in the statute defining
23 the offense, a sentence of imprisonment for a felony shall be a
24 determinate sentence set by the court under this Section,
25 according to the following limitations:

1 (1) for first degree murder,

2 (a) a term shall be not less than 20 years and not
3 more than 60 years, or

4 (b) if a trier of fact finds beyond a reasonable
5 doubt that the murder was accompanied by exceptionally
6 brutal or heinous behavior indicative of wanton
7 cruelty or, except as set forth in subsection (a) (1) (c)
8 of this Section, ~~that any of the aggravating factors~~
9 ~~listed in subsection (b) of Section 9-1 of the Criminal~~
10 ~~Code of 1961 are present,~~ the court may sentence the
11 defendant to a term of natural life imprisonment, or

12 (b-5) a defendant who has been sentenced to death
13 before the effective date of this amendatory Act of the
14 95th General Assembly shall be sentenced as provided in
15 this Chapter V, or

16 (c) the court shall sentence the defendant to a
17 term of natural life imprisonment ~~when the death~~
18 ~~penalty is not imposed~~ if the defendant,

19 (i) has previously been convicted of first
20 degree murder under any state or federal law, or

21 (ii) is a person who, at the time of the
22 commission of the murder, had attained the age of
23 17 or more and is found guilty of murdering an
24 individual under 12 years of age; or, irrespective
25 of the defendant's age at the time of the
26 commission of the offense, is found guilty of

1 murdering more than one victim, or

2 (iii) is found guilty of murdering a peace
3 officer, fireman, or emergency management worker
4 when the peace officer, fireman, or emergency
5 management worker was killed in the course of
6 performing his official duties, or to prevent the
7 peace officer or fireman from performing his
8 official duties, or in retaliation for the peace
9 officer, fireman, or emergency management worker
10 from performing his official duties, and the
11 defendant knew or should have known that the
12 murdered individual was a peace officer, fireman,
13 or emergency management worker, or

14 (iv) is found guilty of murdering an employee
15 of an institution or facility of the Department of
16 Corrections, or any similar local correctional
17 agency, when the employee was killed in the course
18 of performing his official duties, or to prevent
19 the employee from performing his official duties,
20 or in retaliation for the employee performing his
21 official duties, or

22 (v) is found guilty of murdering an emergency
23 medical technician - ambulance, emergency medical
24 technician - intermediate, emergency medical
25 technician - paramedic, ambulance driver or other
26 medical assistance or first aid person while

1 employed by a municipality or other governmental
2 unit when the person was killed in the course of
3 performing official duties or to prevent the
4 person from performing official duties or in
5 retaliation for performing official duties and the
6 defendant knew or should have known that the
7 murdered individual was an emergency medical
8 technician - ambulance, emergency medical
9 technician - intermediate, emergency medical
10 technician - paramedic, ambulance driver, or other
11 medical assistant or first aid personnel, or

12 (vi) is a person who, at the time of the
13 commission of the murder, had not attained the age
14 of 17, and is found guilty of murdering a person
15 under 12 years of age and the murder is committed
16 during the course of aggravated criminal sexual
17 assault, criminal sexual assault, or aggravated
18 kidnaping, or

19 (vii) is found guilty of first degree murder
20 and the murder was committed by reason of any
21 person's activity as a community policing
22 volunteer or to prevent any person from engaging in
23 activity as a community policing volunteer. For
24 the purpose of this Section, "community policing
25 volunteer" has the meaning ascribed to it in
26 Section 2-3.5 of the Criminal Code of 1961.

1 For purposes of clause (v), "emergency medical
2 technician - ambulance", "emergency medical technician
3 - intermediate", "emergency medical technician -
4 paramedic", have the meanings ascribed to them in the
5 Emergency Medical Services (EMS) Systems Act.

6 (d) (i) if the person committed the offense while
7 armed with a firearm, 15 years shall be added to
8 the term of imprisonment imposed by the court;

9 (ii) if, during the commission of the offense,
10 the person personally discharged a firearm, 20
11 years shall be added to the term of imprisonment
12 imposed by the court;

13 (iii) if, during the commission of the
14 offense, the person personally discharged a
15 firearm that proximately caused great bodily harm,
16 permanent disability, permanent disfigurement, or
17 death to another person, 25 years or up to a term
18 of natural life shall be added to the term of
19 imprisonment imposed by the court.

20 (1.5) for second degree murder, a term shall be not
21 less than 4 years and not more than 20 years;

22 (2) for a person adjudged a habitual criminal under
23 Article 33B of the Criminal Code of 1961, as amended, the
24 sentence shall be a term of natural life imprisonment;

25 (2.5) for a person convicted under the circumstances
26 described in paragraph (3) of subsection (b) of Section

1 12-13, paragraph (2) of subsection (d) of Section 12-14,
2 paragraph (1.2) of subsection (b) of Section 12-14.1, or
3 paragraph (2) of subsection (b) of Section 12-14.1 of the
4 Criminal Code of 1961, the sentence shall be a term of
5 natural life imprisonment;

6 (3) except as otherwise provided in the statute
7 defining the offense, for a Class X felony, the sentence
8 shall be not less than 6 years and not more than 30 years;

9 (4) for a Class 1 felony, other than second degree
10 murder, the sentence shall be not less than 4 years and not
11 more than 15 years;

12 (5) for a Class 2 felony, the sentence shall be not
13 less than 3 years and not more than 7 years;

14 (6) for a Class 3 felony, the sentence shall be not
15 less than 2 years and not more than 5 years;

16 (7) for a Class 4 felony, the sentence shall be not
17 less than 1 year and not more than 3 years.

18 (b) The sentencing judge in each felony conviction shall
19 set forth his reasons for imposing the particular sentence he
20 enters in the case, as provided in Section 5-4-1 of this Code.
21 Those reasons may include any mitigating or aggravating factors
22 specified in this Code, or the lack of any such circumstances,
23 as well as any other such factors as the judge shall set forth
24 on the record that are consistent with the purposes and
25 principles of sentencing set out in this Code.

26 (c) A motion to reduce a sentence may be made, or the court

1 may reduce a sentence without motion, within 30 days after the
2 sentence is imposed. A defendant's challenge to the correctness
3 of a sentence or to any aspect of the sentencing hearing shall
4 be made by a written motion filed within 30 days following the
5 imposition of sentence. However, the court may not increase a
6 sentence once it is imposed.

7 If a motion filed pursuant to this subsection is timely
8 filed within 30 days after the sentence is imposed, the
9 proponent of the motion shall exercise due diligence in seeking
10 a determination on the motion and the court shall thereafter
11 decide such motion within a reasonable time.

12 If a motion filed pursuant to this subsection is timely
13 filed within 30 days after the sentence is imposed, then for
14 purposes of perfecting an appeal, a final judgment shall not be
15 considered to have been entered until the motion to reduce a
16 sentence has been decided by order entered by the trial court.

17 A motion filed pursuant to this subsection shall not be
18 considered to have been timely filed unless it is filed with
19 the circuit court clerk within 30 days after the sentence is
20 imposed together with a notice of motion, which notice of
21 motion shall set the motion on the court's calendar on a date
22 certain within a reasonable time after the date of filing.

23 (d) Except where a term of natural life is imposed, every
24 sentence shall include as though written therein a term in
25 addition to the term of imprisonment. For those sentenced under
26 the law in effect prior to February 1, 1978, such term shall be

1 identified as a parole term. For those sentenced on or after
2 February 1, 1978, such term shall be identified as a mandatory
3 supervised release term. Subject to earlier termination under
4 Section 3-3-8, the parole or mandatory supervised release term
5 shall be as follows:

6 (1) for first degree murder or a Class X felony except
7 for the offenses of predatory criminal sexual assault of a
8 child, aggravated criminal sexual assault, and criminal
9 sexual assault if committed on or after the effective date
10 of this amendatory Act of the 94th General Assembly, 3
11 years;

12 (2) for a Class 1 felony or a Class 2 felony except for
13 the offense of criminal sexual assault if committed on or
14 after the effective date of this amendatory Act of the 94th
15 General Assembly, 2 years;

16 (3) for a Class 3 felony or a Class 4 felony, 1 year;

17 (4) for defendants who commit the offense of predatory
18 criminal sexual assault of a child, aggravated criminal
19 sexual assault, or criminal sexual assault, on or after the
20 effective date of this amendatory Act of the 94th General
21 Assembly, the term of mandatory supervised release shall
22 range from a minimum of 3 years to a maximum of the natural
23 life of the defendant;

24 (5) if the victim is under 18 years of age, for a
25 second or subsequent offense of aggravated criminal sexual
26 abuse or felony criminal sexual abuse, 4 years, at least

1 the first 2 years of which the defendant shall serve in an
2 electronic home detention program under Article 8A of
3 Chapter V of this Code.

4 (e) A defendant who has a previous and unexpired sentence
5 of imprisonment imposed by another state or by any district
6 court of the United States and who, after sentence for a crime
7 in Illinois, must return to serve the unexpired prior sentence
8 may have his sentence by the Illinois court ordered to be
9 concurrent with the prior sentence in the other state. The
10 court may order that any time served on the unexpired portion
11 of the sentence in the other state, prior to his return to
12 Illinois, shall be credited on his Illinois sentence. The other
13 state shall be furnished with a copy of the order imposing
14 sentence which shall provide that, when the offender is
15 released from confinement of the other state, whether by parole
16 or by termination of sentence, the offender shall be
17 transferred by the Sheriff of the committing county to the
18 Illinois Department of Corrections. The court shall cause the
19 Department of Corrections to be notified of such sentence at
20 the time of commitment and to be provided with copies of all
21 records regarding the sentence.

22 (f) A defendant who has a previous and unexpired sentence
23 of imprisonment imposed by an Illinois circuit court for a
24 crime in this State and who is subsequently sentenced to a term
25 of imprisonment by another state or by any district court of
26 the United States and who has served a term of imprisonment

1 imposed by the other state or district court of the United
2 States, and must return to serve the unexpired prior sentence
3 imposed by the Illinois Circuit Court may apply to the court
4 which imposed sentence to have his sentence reduced.

5 The circuit court may order that any time served on the
6 sentence imposed by the other state or district court of the
7 United States be credited on his Illinois sentence. Such
8 application for reduction of a sentence under this subsection
9 (f) shall be made within 30 days after the defendant has
10 completed the sentence imposed by the other state or district
11 court of the United States.

12 (Source: P.A. 94-165, eff. 7-11-05; 94-243, eff. 1-1-06;
13 94-715, eff. 12-13-05.)

14 (730 ILCS 5/5-8-4) (from Ch. 38, par. 1005-8-4)

15 Sec. 5-8-4. Concurrent and Consecutive Terms of
16 Imprisonment.

17 (a) When multiple sentences of imprisonment are imposed on
18 a defendant at the same time, or when a term of imprisonment is
19 imposed on a defendant who is already subject to sentence in
20 this State or in another state, or for a sentence imposed by
21 any district court of the United States, the sentences shall
22 run concurrently or consecutively as determined by the court.
23 When one of the offenses for which a defendant was convicted
24 was a violation of Section 32-5.2 of the Criminal Code of 1961
25 and the offense was committed in attempting or committing a

1 forcible felony, the court may impose consecutive sentences.
2 When a term of imprisonment is imposed on a defendant by an
3 Illinois circuit court and the defendant is subsequently
4 sentenced to a term of imprisonment by another state or by a
5 district court of the United States, the Illinois circuit court
6 which imposed the sentence may order that the Illinois sentence
7 be made concurrent with the sentence imposed by the other state
8 or district court of the United States. The defendant must
9 apply to the circuit court within 30 days after the defendant's
10 sentence imposed by the other state or district of the United
11 States is finalized. The court shall impose consecutive
12 sentences if:

13 (i) one of the offenses for which defendant was
14 convicted was first degree murder or a Class X or Class 1
15 felony and the defendant inflicted severe bodily injury, or

16 (ii) the defendant was convicted of a violation of
17 Section 12-13, 12-14, or 12-14.1 of the Criminal Code of
18 1961, or

19 (iii) the defendant was convicted of armed violence
20 based upon the predicate offense of solicitation of murder,
21 solicitation of murder for hire, heinous battery,
22 aggravated battery of a senior citizen, criminal sexual
23 assault, a violation of subsection (g) of Section 5 of the
24 Cannabis Control Act, cannabis trafficking, a violation of
25 subsection (a) of Section 401 of the Illinois Controlled
26 Substances Act, controlled substance trafficking involving

1 a Class X felony amount of controlled substance under
2 Section 401 of the Illinois Controlled Substances Act, a
3 violation of the Methamphetamine Control and Community
4 Protection Act, calculated criminal drug conspiracy, or
5 streetgang criminal drug conspiracy, or

6 (iv) the defendant was convicted of the offense of
7 leaving the scene of a motor vehicle accident involving
8 death or personal injuries under Section 11-401 and either:

9 (A) aggravated driving under the influence of alcohol,
10 other drug or drugs, or intoxicating compound or compounds,
11 or any combination thereof under Section 11-501 of the
12 Illinois Vehicle Code, or (B) reckless homicide under
13 Section 9-3 of the Criminal Code of 1961, or both an
14 offense described in subdivision (A) and an offense
15 described in subdivision (B), or

16 (v) the defendant was convicted of a violation of
17 Section 9-3.1 (concealment of homicidal death) or Section
18 12-20.5 (dismembering a human body) of the Criminal Code of
19 1961,

20 in which event the court shall enter sentences to run
21 consecutively. Sentences shall run concurrently unless
22 otherwise specified by the court.

23 (b) Except in cases where consecutive sentences are
24 mandated, the court shall impose concurrent sentences unless,
25 having regard to the nature and circumstances of the offense
26 and the history and character of the defendant, it is of the

1 opinion that consecutive sentences are required to protect the
2 public from further criminal conduct by the defendant, the
3 basis for which the court shall set forth in the record.

4 (c) (1) For sentences imposed under law in effect prior to
5 February 1, 1978 the aggregate maximum of consecutive
6 sentences shall not exceed the maximum term authorized
7 under Section 5-8-1 for the 2 most serious felonies
8 involved. The aggregate minimum period of consecutive
9 sentences shall not exceed the highest minimum term
10 authorized under Section 5-8-1 for the 2 most serious
11 felonies involved. When sentenced only for misdemeanors, a
12 defendant shall not be consecutively sentenced to more than
13 the maximum for one Class A misdemeanor.

14 (2) For sentences imposed under the law in effect on or
15 after February 1, 1978, the aggregate of consecutive
16 sentences for offenses that were committed as part of a
17 single course of conduct during which there was no
18 substantial change in the nature of the criminal objective
19 shall not exceed the sum of the maximum terms authorized
20 under Section 5-8-2 for the 2 most serious felonies
21 involved, but no such limitation shall apply for offenses
22 that were not committed as part of a single course of
23 conduct during which there was no substantial change in the
24 nature of the criminal objective. When sentenced only for
25 misdemeanors, a defendant shall not be consecutively
26 sentenced to more than the maximum for one Class A

1 misdemeanor.

2 (d) An offender serving a sentence for a misdemeanor who is
3 convicted of a felony and sentenced to imprisonment shall be
4 transferred to the Department of Corrections, and the
5 misdemeanor sentence shall be merged in and run concurrently
6 with the felony sentence.

7 (e) In determining the manner in which consecutive
8 sentences of imprisonment, one or more of which is for a
9 felony, will be served, the Department of Corrections shall
10 treat the offender as though he had been committed for a single
11 term with the following incidents:

12 (1) the maximum period of a term of imprisonment shall
13 consist of the aggregate of the maximums of the imposed
14 indeterminate terms, if any, plus the aggregate of the
15 imposed determinate sentences for felonies plus the
16 aggregate of the imposed determinate sentences for
17 misdemeanors subject to paragraph (c) of this Section;

18 (2) the parole or mandatory supervised release term
19 shall be as provided in paragraph (e) of Section 5-8-1 of
20 this Code for the most serious of the offenses involved;

21 (3) the minimum period of imprisonment shall be the
22 aggregate of the minimum and determinate periods of
23 imprisonment imposed by the court, subject to paragraph (c)
24 of this Section; and

25 (4) the offender shall be awarded credit against the
26 aggregate maximum term and the aggregate minimum term of

1 imprisonment for all time served in an institution since
2 the commission of the offense or offenses and as a
3 consequence thereof at the rate specified in Section 3-6-3
4 of this Code.

5 (f) A sentence of an offender committed to the Department
6 of Corrections at the time of the commission of the offense
7 shall be served consecutive to the sentence under which he is
8 held by the Department of Corrections. ~~However, in case such~~
9 ~~offender shall be sentenced to punishment by death, the~~
10 ~~sentence shall be executed at such time as the court may fix~~
11 ~~without regard to the sentence under which such offender may be~~
12 ~~held by the Department.~~

13 (g) A sentence under Section 3-6-4 for escape or attempted
14 escape shall be served consecutive to the terms under which the
15 offender is held by the Department of Corrections.

16 (h) If a person charged with a felony commits a separate
17 felony while on pre-trial release or in pretrial detention in a
18 county jail facility or county detention facility, the
19 sentences imposed upon conviction of these felonies shall be
20 served consecutively regardless of the order in which the
21 judgments of conviction are entered.

22 (i) If a person admitted to bail following conviction of a
23 felony commits a separate felony while free on bond or if a
24 person detained in a county jail facility or county detention
25 facility following conviction of a felony commits a separate
26 felony while in detention, any sentence following conviction of

1 the separate felony shall be consecutive to that of the
2 original sentence for which the defendant was on bond or
3 detained.

4 (Source: P.A. 93-160, eff. 7-10-03; 93-768, eff. 7-20-04;
5 94-556, eff. 9-11-05; 94-985, eff. 1-1-07.)

6 (730 ILCS 5/5-8-5) (from Ch. 38, par. 1005-8-5)

7 Sec. 5-8-5. Commitment of the Offender. Upon rendition of
8 judgment after pronouncement of a sentence of periodic
9 imprisonment or imprisonment, ~~or death~~, the court shall commit
10 the offender to the custody of the sheriff or to the Department
11 of Corrections. A sheriff in executing an order for commitment
12 to the Department of Corrections shall convey such offender to
13 the nearest receiving station designated by the Department of
14 Corrections. The court may commit the offender to the custody
15 of the Attorney General of the United States under Section
16 5-8-6 when a sentence for a State offense provides that such
17 sentence is to run concurrently with a previous and unexpired
18 federal sentence. The expense of conveying a person committed
19 by the juvenile court or an offender convicted of a felony
20 shall be paid by the State. The expenses in all other cases
21 shall be paid by the county of the committing court.

22 (Source: P.A. 84-551.)

23 Section 70. The Code of Civil Procedure is amended by
24 changing Sections 10-103 and 10-136 as follows:

1 (735 ILCS 5/10-103) (from Ch. 110, par. 10-103)

2 Sec. 10-103. Application. Application for the relief shall
3 be made to the Supreme Court or to the circuit court of the
4 county in which the person in whose behalf the application is
5 made, is imprisoned or restrained, or to the circuit court of
6 the county from which such person was sentenced or committed.
7 Application shall be made by complaint signed by the person for
8 whose relief it is intended, or by some person in his or her
9 behalf, and verified by affidavit. ~~Application for relief under
10 this Article may not be commenced on behalf of a person who has
11 been sentenced to death without the written consent of that
12 person, unless the person, because of a mental or physical
13 condition, is incapable of asserting his or her own claim.~~

14 (Source: P.A. 89-684, eff. 6-1-97.)

15 (735 ILCS 5/10-136) (from Ch. 110, par. 10-136)

16 Sec. 10-136. Prisoner remanded or punished. After a
17 prisoner has given his or her testimony, or been surrendered,
18 or his or her bail discharged, or he or she has been tried for
19 the crime with which he or she is charged, he or she shall be
20 returned to the jail or other place of confinement from which
21 he or she was taken for that purpose. If such prisoner is
22 convicted of a crime punishable with ~~death or~~ imprisonment in
23 the penitentiary, he or she may be punished accordingly; but in
24 any case where the prisoner has been taken from the

1 penitentiary, and his or her punishment is by imprisonment, the
2 time of such imprisonment shall not commence to run until the
3 expiration of the time of service under any former sentence.
4 (Source: P.A. 82-280.)

5 Section 95. No acceleration or delay. Where this Act makes
6 changes in a statute that is represented in this Act by text
7 that is not yet or no longer in effect (for example, a Section
8 represented by multiple versions), the use of that text does
9 not accelerate or delay the taking effect of (i) the changes
10 made by this Act or (ii) provisions derived from any other
11 Public Act.

12 Section 99. Effective date. This Act takes effect upon
13 becoming law.

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3	20 ILCS 2605/2605-40	was 20 ILCS 2605/55a-4
4	20 ILCS 2630/2.1	from Ch. 38, par. 206-2.1
5	30 ILCS 105/5.518 rep.	
6	55 ILCS 5/3-4011	from Ch. 34, par. 3-4011
7	55 ILCS 5/3-9005	from Ch. 34, par. 3-9005
8	55 ILCS 5/3-4006.1 rep.	
9	105 ILCS 5/21-23b	from Ch. 122, par. 21-23b
10	305 ILCS 5/1-8	
11	720 ILCS 5/2-7	from Ch. 38, par. 2-7
12	720 ILCS 5/7-10	from Ch. 38, par. 7-10
13	720 ILCS 5/9-1	from Ch. 38, par. 9-1
14	720 ILCS 5/9-1.2	from Ch. 38, par. 9-1.2
15	720 ILCS 5/30-1	from Ch. 38, par. 30-1
16	720 ILCS 5/33B-1	from Ch. 38, par. 33B-1
17	720 ILCS 550/9	from Ch. 56 1/2, par. 709
18	725 ILCS 5/104-26	from Ch. 38, par. 104-26
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